



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

Case reference : **LON/00AC/LSC/2019/0083**

Property : **Flat C, 25 The Broadway, Mill Hill,
NW7 3DA**

Applicant : **25 ABC The Broadway Residents
Management Company Limited**

Representative : **Mr Wragg of Counsel**

Respondent : **Fariba Nadimi**

Representative : **In person**

Type of application : **For the determination of the
reasonableness of and the liability
to pay service and administration
charges**

Tribunal members : **Tribunal Judge I Mohabir
Mr S Mason FRICS FCI Arb**

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

Date of decision : **3 June 2019**

DECISION

Introduction

1. The Applicant issued proceedings in the County Court to recover arrears of service charges for the period ended 30 June 2018 and administration charges from the Respondent in the sum of £1,144.50 and £340 respectively.
2. The Respondent filed a Defence to the claim and contended that the service charges claimed are not payable because:
 - (a) the relevant demand is not valid by failing to comply with clause 12 in the Sixth Schedule and/or clause 2 in the Fifth Schedule of the lease. In the alternative, the demand was not accurate.
 - (b) the correct estimate had not been included in the Notice of Estimates as part of the section 20 statutory consultation process. In the alternative, the consultation process was materially and substantively defective.
 - (c) clause 12 in the Sixth Schedule and clause 5 in the Fifth Schedule in the Respondent's lease only requires her to pay a service charge contribution for actual costs incurred or likely to arise or be incurred and, therefore, there is no lawful basis for making the demand.
3. As to the administration charges, the Respondent contends that the costs are not recoverable under clause 17 in the Fourth Schedule of the lease.
4. Each of these issues is dealt with in turn below. For the avoidance of doubt, the Respondent does not challenge the actual amount claimed for the service charges.
5. By an order made by District Judge Bell in the County Court at Clerkenwell and Shoreditch, the matter was transferred to the Tribunal for determination. As a matter of jurisdiction, the only issues on which the Tribunal can make a determination are the disputed service and administration charges.
6. The Tribunal's determination in relation to the service charges takes place pursuant to section 27A of the landlord and Tenant Act 1985 (as amended) ("the Act") and under paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 in relation to the administration charges.

7. The Respondent is the leaseholder of Flat C, 25 The Broadway, Mill Hill, NW7 3DA pursuant to a lease granted to her by Michael Holden Limited dated 5 August 2016 (“the lease”). The form of lease granted was a tripartite lease, which included the Applicant as a party.
8. By clause 6.1.1 of the lease, the Applicant covenanted with the Respondent (and the landlord) to carry out the repairs and provide the services set out in the Sixth Schedule. In particular, clauses 12 and 13 in the Sixth Schedule oblige the Applicant to repair and maintain all parts of “the Estate”, including the common parts. The Estate is defined as the non-demised parts of the site.
9. Clause 5.1.2 of the lease requires the Respondent to pay a service charge contribution by two equal half yearly instalments.
10. Both clause 2 in the Fifth Schedule and clauses 2 and 3 in the Seventh Schedule of the lease make it clear what costs, expenses and outgoings comprise the overall service charge expenditure for which the Respondent is obliged to pay a contribution. These include not only the expenses incurred by the Applicant pursuant to the Sixth Schedule but also an estimated sum for the reserve fund. The Respondent’s service charge contribution is 25% in respect of these costs.
11. On 27 October 2016, the Applicant’s managing agent, Aldermartin Baines & Cuthbert (“ABC”), served a Notice of Intention on the lessees as part of the statutory consultation process required by section 20 of the Act. The notice stated that it was intended to redecorate the internal common parts and upgrade/replace the carpets and lighting (“the major works”). No responses were received to the notice from the lessees.
12. On 15 December 2016, ABC then served a Notice of Estimates in respect of the proposed major works with a recommendation that the lowest estimate of £6,300 including VAT provided by Hammer & Chisel Limited be accepted. This estimate included a sum of £1,300 for recarpeting. In addition, ABC would be charging a supervision fee of 10% plus VAT. Again, no responses were received from the lessees.
13. On 27 December 2017, ABC issued a service charge demand to the Respondent for the half yearly period from 1 January to 30 June 2016 for her contribution of £887.50 in respect of the estimated cost of the proposed major works and a further sum of £257 for the reserve fund contribution making a total of £1,144.50.
14. By an email dated 11 April 2018, ABC confirmed to the lessees that once the outstanding service charge demands had been paid, the proposed works would commence. It also contained an offer to provide “fresh copies of the demands” if required.

15. In a subsequent email later the same day, ABC confirmed that the recarpeting would not form part of the proposed works. It seems that on or about 11 April 2018 Hammer & Chisel agreed to reduce their estimate for the internal redecorations and repairs by £100 to £3,850.
16. When the Respondent's service charge demand remained unpaid, ABC sent a further demand on 16 May 2018 and put her on notice that if payment was not made within 7 days, they were instructed to commence debt recovery proceedings.
17. On 25 May 2018, Property Debt Recovery Collection Limited ("PDC") instructed by the Applicant, sent a demand to the Respondent for payment which included their administration fee of £250.
18. A reply sent on behalf of the Respondent to PDC dated 13 June 2018 asserted that payment had not been made because she was waiting for ABC to issue an amended service charge demand as a result of the agreement to remove the estimated cost of the recarpeting. It is on this basis that the Respondent contends that the service charge demand is invalid and/or inaccurate.
19. By an email dated 11 June 2018, ABC confirmed that whilst the recarpeting was not proceeding, the service charge contribution demanded was payable and if there was an unspent surplus at the end of the year, a refund would be paid to the lessees. Subsequently, ABC instructed solicitors to pursue payment from the Respondent and incurred an administration fee of £90 in doing so.

Relevant Law

20. This is set out in the Appendix to the decision.

Decision

21. The hearing in this case took place on 29 May 2019. The Applicant was represented by Mr Wragg of Counsel. The Respondent appeared in person and was accompanied by Mr Khani. The Tribunal dealt with the evidence by way of submissions.

Service Charges

Demand not Valid

22. Having carefully considered the lease, the Tribunal was satisfied that both the estimated service charge costs and the reserve fund contribution fell within the definition of the "Annual Maintenance Provision" in clause 2 in the Fifth Schedule. The Tribunal found that

the estimated cost of the major works was recoverable service charge expenditure under clause 12 in the Sixth Schedule. The Tribunal also found that the Respondent was obliged to pay the sum demanded pursuant to clauses 2 and 3 in the Seventh Schedule of the lease.

23. As to the accuracy of the demand, the Tribunal found that even though it was agreed that the recarpeting would not proceed, this did not render it inaccurate or unreasonable. The estimated service charge demand is a demand for a global sum and should not be viewed as being apportioned for various items of work. That is simply done as a matter of convenience by way of explanation. It may have been the case that the final cost of the proposed work exceeded the original estimate as a result of unforeseen work
24. The Tribunal was satisfied that the email from ABC to the Respondent dated 11 April 2018 offering to provide “fresh copies of the demand” was not an agreement to amend the demand, but simply an offer to provide duplicate copies. The Tribunal is supported in this view by the subsequent email from ABC dated 11 June 2018 confirming that the demand remained payable and in the event that there was a surplus at the end of the year, a repayment would be made to the lessees.
25. Accordingly, the Tribunal found that the demand is contractually payable and the service charges claimed are reasonable.

Section 20 Consultation

26. The Respondent’s case appears to be that the Applicant should have proceeded with an earlier estimate from JJR Maintenance dated 15 June 2016 in the sum of £1,350 to carry out the internal redecorations.
27. As a matter of law, this submission fails because the estimate from JJR Maintenance did not form one of the estimates on which the Notice of Estimates dated 15 December 2016 was based. Therefore, the section 20 notice cannot be said to be invalid by reason of this omission.
28. The Respondent advanced no other case as to why the section 20 consultation process carried out by the ABC was defective.
29. Accordingly, the Tribunal found that the section 20 consultation process was valid.

Administration Charges - Costs

30. The Tribunal was satisfied that the Applicant’s costs (as administration charges) of pursuing payment of the service charge demand in the sum of £340 are recoverable under clause 2(b) in the Fourth Schedule of the

lease on an indemnity basis. They fall within the definition of the “costs and expenses incurred by in enforcing payment by the Tenant of...other monies payable by the Tenant”.

31. For the avoidance of doubt, the Tribunal found the costs to be reasonably incurred because of the Respondent’s non payment whose stance about withholding payment the Tribunal has concluded was incorrect. The Tribunal also found the costs to be reasonable.
32. This case is now remitted back to the County court to determine any other outstanding matters.

Name: Tribunal Judge I
Mohabir

Date: 3 June 2019

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.

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).