FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LSC/2019/0104**
Property	**:**	**Flats at Red House Apartments, 269 Sanderstead Road, South Croydon, CR2 0AG**
Applicant	**:**	**Dennis Keeling (flat 10);Mr P Phouli (flat 9); Helen Centre (flat 8); Mr P Sinden (flat 7); Courtney Roots (flat 5); Cass Pennant (flat 3); Maureen Ann Dunbar (flat 2)**
Representative	**:**	**Mr McDonell**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Ms Lyne of Counsel**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge D Brandler** **Mr C Gowman BSc MCIEH** **Mr C Piarroux JP**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 26th July 2019**
Date of Decision	**:**	**12th August 2019**

DECISION

DECISION

1. The Tribunal determines that the following sums are due and payable by the Applicants:

   (a) £700.00 plus vat for the surveyor's fees for reinstatement cost assessment;
   (b) £1200.00 plus vat for the surveyor's inspection fees further to water leaks;
   (c) £500.00 plus vat for the accountants fees for year ending 2018;
   (d) £20.00 inclusive of vat for a chasing letter from the Respondent; and
   (e) £330.00 plus vat for legal fees.

2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) so none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through the service charge. Details of the lessees are as named on the application form.

3. The Tribunal also determines that the Respondent shall not be entitled to recover the costs of the proceedings and makes an order under paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 extinguishing any liability the applicants may have had to the respondent in respect of the costs of these proceedings.

4. The Tribunal determines the Respondent shall pay to the Applicant the sum of £300 within 28 days of this decision in respect of the reimbursement of the Tribunal fees paid by the Applicant.

APPLICATION

1. The Applicants seek a determination pursuant to section 27A of the Landlord & Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to the amount of service charges and administration charges payable by the Applicants in respect of 2018 and 2019.
2. The relevant legal provisions are set out in the appendix to this decision.

BACKGROUND

3. The property is a purpose built block of flats in South Croydon comprising 10 flats.

4. The Tribunal understands that the Respondent purchased the property at auction on 13th February 2017 and is said to have completed its purchase on 13th March 2017. However, recent Land Registry official copy entries show that the legal title remains vested in its predecessor, Espressa Management Ltd.

5. On 30th April 2019 an oral directions hearing took place before Tribunal Judge Dutton at which Mr Keeling (flat 10) was present, accompanied by Mr James McDonnell. The Respondent did not attend. The Tribunal were told that the Applicants have formed a RTM company (The Red House RTM Company Limited) who acquired the right to manage on 12th February 2019, effective from 11th May 2019. The Applicants confirmed that they no longer pursue a determination in

relation to the building insurance charge, nor in relation to the repair fund anticipated in 2019 of £3500.

6. Of the directions made by the Tribunal on 30th April 2019, which are set out at pp 57-62 of the bundle, the Respondent failed to comply with the following:-

    a. To provide disclosure of the insurance claim relating to the leaks at the Property for which the surveyors were instructed, to include copies of the reports
    b. To file and serve a statement of case

7. The Applicant filed and served a statement of case dated 3rd June 2019, and wrote to the Respondent on 8th July 2019 asking for their statement of case and reminding them that the accountant's invoice and details of the insurance claims were still outstanding.

8. Upon perusal of the Tribunal's file prior to the hearing, a document was located, date stamped as received on 4th July 2019, headed up "The Applicant's statement of case". On closer reading, it became clear that this document was actually the Respondent's statement of case, wrongly headed up, undated and apparently unserved upon the Applicants.

THE HEARING

9. The Applicants were represented by Mr McDonnell, a lay representative, who was accompanied by Mr Keeling of Flat 10. No other leaseholder attended, although signed applications to be joined were noted in the Tribunal's file.

10. The Respondent was represented by Ms Lyne of Counsel, who was not accompanied by anyone from the Respondent company. The Tribunal were assisted by Counsel's skeleton argument, but no further clarification on issues arising was available during the hearing, for lack of an instructing client.

11. At the beginning of the hearing, the Applicant confirmed that he had not had sight of the Respondent's statement of case. He was handed a copy of this document and the hearing was adjourned for a short period to allow the Applicant and his representative time to consider the contents.

12. Having noted that the Respondent was in breach of several directions made at the previous hearing, namely, failure to provide the insurance documentation required, failure to provide a statement of case on time to the Tribunal, and failure to provide a copy to the Applicants at all, Counsel for the Respondents was not in a position to provide any explanation for these breaches and could do no more than apologise on behalf of her client.

13. It was further noted that the Applicant had been deprived of the right to respond to the Respondent's statement of case. No application for an adjournment was made to allow such a reply and the Tribunal continued to hear the appeal.

14. Mr McDonnell for the Applicants presented their case as follows:-

Surveyor's fees - reinstatement cost assessment

15. Mr McDonell referred the Tribunal to the invoice from JMC Chartered Surveyors & Property Consultants at p.5 of the bundle. The fee charged for this service being £1600.00 plus VAT prepared at the request of the Respondent. Mr McDonnell's position was that this fee is not reasonable and suggested the reason for the high fee may have been because the surveyor had a long journey from Manchester by car.

16. Comparables for this service were provided by Mr McDonnell and appear at pp 97-99 of the bundle and are as follows:-

    (i) Survey Homes KOS Ltd dated 19/02/2019 quoting a fee of £500.00 inclusive of VAT;
    (ii) David P Nesbit BA(hons) MSc MRICS MFPWS, Director of a fully RICS regulated firm dated 13/05/2019 for a fee of £700.00 plus VAT; and
    (iii) Bradley Harris Limited quoting a fee of £1,000.00 plus VAT dated 16/05/2019.

17. The Respondent's position, as set out in their Statement of case, is that the fees charged by their surveyor reflect standard hourly rates and take into account the work required to prepare the report which is included in the bundle. They say that the Applicants' comparables do not provide such detail. Mr McDonnell in response states that had he received the Respondents statement of case as directed, he could have responded to that point by collecting further information from his quote providers, but that he was now disadvantaged because of the Respondent's breach.

18. Counsel for the Respondent sets out their position at paragraph 13 of her skeleton argument and rejects the quotations obtained by the Applicants as not being truly comparable because there is no information about the experience and expertise of the practice or about the professional indemnity cover held by the companies. In addition, Counsel makes the point that the Respondent is not required to use the cheapest quote for service.

Surveyor's fees – inspection further to water leaks

19. The Applicants' position is that the fees for the inspections at a cost of £600 plus VAT each, should be payable as part of the insurance claim. The Tribunal were assisted by provision by Counsel of a legible copy of the insurance policy.

20. It is not disputed by the Respondent that these fees should be covered by the insurance claim, as set out at paragraph 4 of their statement of case. The Tribunal were taken to the relevant paragraphs in the insurance policy wording at pages 11, section 21, and page 12 section 27. The Respondent's position is that the fees must be paid by the Applicants prior to the insurance claim being settled. Once the claim is settled, a refund be made to the service charge account.

21. However, in breach of the Directions dated 30th April 2019, the Respondent has failed to provide details of this insurance claim relating to leaks at the property for which the surveyors were instructed. Nor are any of the reports provided. Counsel

for the Respondent did not have instructions in relation to this breach. It was common ground that there had been a refund of £438.00 to the service charge account at p. 117 of the bundle which states "Refund from insurers for Trace & Access" indicating that an insurance claim had been made. That was however the only evidence to indicate a claim had been made.

22. No application in relation to reasonableness of these surveyors' fees was made.

Accountant's fees

23. The Applicants object to the sum claimed by Martin & Heller, Chartered Accountants, on the basis that the fees are excessive and unreasonable. The fee claimed is £625.00 plus VAT for the service charge accounts for 2018.

24. Mr McDonnell pointed out various discrepancies in the accounts which he says indicate an unprofessional service as follows:-

25. As a comparable, the 2017 accounts had been included in the bundle at p.116. The document is headed up "Service charge account for the period ending 25 December 2017" from Martin & Heller, chartered accountants. In contrast the accounts are certified to be for the period ended 1st December 2017 and are signed on that date.

26. Mr McDonnell then drew the Tribunal's attention to p. 117 of the bundle and a document headed "Service charge account for the period ending 25 December 2018" from Martin & Heller. In that document certification is for the period ended 3rd December 2018, not 25th December 2018.

27. Mr McDonnell referred the Tribunal to clause 1.1. of the lease, the interpretation and definition of "the Financial Year" is stated to mean the period from 1st January to 31st January. The 'Financial Year' is later referred to under clause 3 of Schedule Five, providing further clarification as to the certificate of annual expenditure being made available "as soon after the end of the Financial Year as may be practicable". Neither the 2017 nor the 2018 certified accounts were prepared after the end of the 'Financial Year'. Having regard to those inconsistencies, Mr McDonnell questions the professionalism of the accountants.

28. Mr McDonnell told the Tribunal that he had originally asked for the Accountant's fee note prior to the last hearing of this matter, and had raised this issue with Judge Dutton at the directions hearing. This is reflected in the direction for the Respondent to provide the accountant's invoice for accounts to December 2018. This was only received in March 2019 from Martin & Heller. That fee note is dated "03-Dec-18" purporting to be for "Reviewing and reporting on your service charges statement for the financial year ending December 2017 to December 2018". It would appear to tie up with the certified accounts dated 03 December 2018 but it was unclear why there was reference to "year ending December 2017. There are further inconsistencies in this document which do not reflect a professional organisation, namely there is no invoice number which would be expected and the fee note itself is addressed to "The Lessees, The Red House" rather than to the managing agents. A copy of that document was handed to the Tribunal during the hearing and has been added to the bundle.

29. Mr McDonnell asks that all these issues be taken into account, and that the Tribunal reduce the Accountants fees.

30. In response, set out in the Respondent's statement of case, they say that no comparative quotes have been provided for accountant's fees and that the fee is reasonable for a professional accountant to review accounts of the size of this property. Mr McDonnell's position in response is that because of the Respondent's failure to serve a statement of case, they were prejudiced by this breach of directions. He says that had he had warning of the argument about lack of comparables, he could have made provision for this in his response, and the Applicants have therefore been compromised by the Respondent's lack of compliance with the directions. Counsel for the Respondent referred to her skeleton argument. She says that the issue of accountancy fees is a new issue stating that the Respondent denies that this matter should be determined by the Tribunal in circumstances where these matters were not included in the application or raised at the directions hearing.

31. The previous directions were referred to, in which clear reference was made to accountancy fees.

Administration and Legal fees

32. Mr McDonnell's first argument in this regard is that the Respondent is not entitled to claim such fees because of their breach of s.47 Landlord & Tenant Act 1987. He makes this argument because the Respondent has failed to register their interest at the Land Registry and as at 31st May 2019 the Land Registry record the freeholder of the Property as Espressa Management Ltd. He also implied difficulties that the Respondent appears to be having in relation to registering their purported freehold interest referring the Tribunal to correspondence in the bundle at pp 124-135.

33. Mr McDonnell went on to refer the Tribunal to the terms of the lease which state at clause 1.1 of Schedule One, that "the Landlord is registered at the Land Registry as the proprietor of the land comprised in Title Number SGL34084", and as Espressa Management Ltd are still registered as the freeholder, the Respondent cannot act as the Landlord, and the Respondent's assertion that they are the freeholder is incorrect, and in breach of s.47. An example is at p. 119 of the bundle, asserting that the freeholder is Assethold Ltd. Mr McDonnell's position is that the failure under s.47, no administrative or legal fees can be claimed legally by the Respondent.

34. In response, Ms Lyne sets out clearly in her skeleton argument at paragraphs 15-18 and further states that in any event the Respondent is the beneficial freeholder.

35. Mr McDonnell's second argument in terms of this heading, is that the charges are not reasonable being extremely high. Details are set out as follows:-

36. On 2nd January 2019 the Respondent sent a demand for late payment. This is one day after the service charge became due and Mr McDonnell says that it is unreasonable to make such a demand so quickly after the due date. That demand letter extends the payment deadline to the 11th January 2019 and warns that if

payment is not received by that date the matter will be escalated. That means that additional cost will be incurred in the sum of £120 inclusive of VAT. By 28th January 2019 the Respondent writes a letter stating they have no choice but to apply to the court for "Possession judgment on your flat" and charge £120.00.

37. By 12th February 2019 the matter has been referred to solicitors and a letter "before claim" is issued on that date. More administration charges are levied. Mr McDonnell states that all 7 of the Applicant's received this letter from solicitors. Attached to each solicitor's letter was an Eagerstates Ltd statement of account. An example is attached at p.123 of the bundle setting out details of legal charges, part of which, the solicitor's letter states, can be disregarded if payment is made in full within 30 days.

38. Ms Lyne was able to confirm that the charges set out at p.123 for legal costs of £600, admin costs £240, land registry fee of £5 and court fee of £455 had not been incurred and will be removed from the demand.

39. The fees that remain are the solicitor's charges of £600 and administration costs of £360. Ms Lyne explained that the administration charges reflect time incurred by the Respondent in reviewing their files, ensuring that all demands had been correctly made, before referring the matter on to their solicitors.

Tribunal fees and S.20C application

40. The Applicants seek a refund of the Tribunal fees, as well as making an application under s.20C of the Landlord & Tenant Act 1985.

41. Ms Lyne resists this application on the basis that a number of issues originally claimed by the Applicants are no longer challenged by them, and that it is not just and equitable to grant such an order.

DECISION

Surveyor's fees - reinstatement cost assessment: £700 plus VAT is payable by the Applicants

42. The Tribunal considered the various quotes offered as comparables. These were £500, £700 and £1000. The comparable quotation fee of £700 plus VAT was from David P. Nesbit which provided for an" inspection, measurement, calculations and producing an RICS insurer compliant report stating the reinstatement cost for insurance purposes". Although the Landlord is not obliged to take the cheapest quote, they are required to consider what is reasonable. The Tribunal having found that the fee charged by the Manchester firm of £1600.00 plus VAT was unreasonably high, considered that the comparable of £700 plus VAT was reasonable and payable.

Surveyor's fees – inspection further to water leaks: £1,200.00 plus VAT is payable by the Applicants for two surveyors' inspections.

43. The Respondent in their statement of case confirm that this may be covered by the insurance claim once the claim is settled. Thereafter the fees would be refunded to

the service charge account. The Applicants are disadvantaged by not having seen the details of the insurance claim in breach of the directions asking the Respondent to disclose this. There was however indication that an insurance claim had been made, by reference to the refund of track and trace fees, on that basis the Tribunal were satisfied that a claim had been made. The Tribunal were also satisfied that by the terms of the insurance policy such charges should be covered by a claim.

44. No application was made in relation reasonableness of the charge. The Tribunal did not therefore consider that issue.

Accountant's fees: £500.00 plus VAT is payable.

45. Whilst accounts have been prepared, there are inconsistencies and errors in relation to the periods covered. The Lease provides for the accounting period to be from 1st January to 31st December. In contrast Martin & Heller's accounting periods end on 1st December 2017 and 3rd December 2018. Both sets of accounts claim in the heading to cover the period to 25th December. The Tribunal did not consider such discrepancies to be compatible with certainty or clarity of work carried out or periods covered. There was also the issue of a fee note without an invoice number, having been addressed to the lessees direct rather than to the management company which appeared unprofessional.

46. On the basis of errors, inconsistencies and lack of clarity, the Tribunal made deductions from the original fee claimed and find that £500 plus VAT is payable.

Administration and Legal fees: £20 inclusive of VAT is payable for the reminder letter from the Respondent; £330 plus VAT is payable in relation to the legal fees incurred; No charge is allowed for the administration fee charged at £360 for the Respondent to check that demands had been validly made.

47. The Tribunal do not find that the Respondent is in breach of s.47 of the Landlord and Tenant Act 1987. Whilst the Respondent appears to have some difficulty in registering their interest at the Land Registry, they appear to have a beneficial interest in the freehold ownership. The Tribunal have not seen anything to either confirm or deny this position, but it was noted that the Applicants have issued this claim against the Respondents and therefore appear to have accepted that they do have an interest. The Applicants have provided nothing to refute a beneficial interest and s.47 does not apply. The demands are therefore valid.

48. The Tribunal considered the terms of the lease and were satisfied that legal and administrative charges could be demanded by virtue of clause 7 of Schedule three.

49. In relation to the charge for the late payment demand, the Respondent by their Counsel, argues that prior to drafting this letter, they need to check that the demands were correctly issued in the first place and the fee of £120 is to cover such work. The Tribunal considered this to be a duplication of work and that Eagerstates should have made sure demands were valid and correct before issuing them in the first place. The Tribunal accept that a charge for a reminder letter is a recoverable administration charge, the fee of £120 per letter was very high and unreasonable. £20 inclusive of VAT was allowed.

50. In relation to the administration charges claimed by the Respondents to check their own records again before referring the matter to their solicitors in the sum of £360, the Tribunal found this was a further duplication of work that must already have been carried out and is not allowed.

51. The £600 legal costs claimed by Eagerstates Ltd for the work up to and including the letter before action to all the Applicants in February 2019 is unreasonable. The Respondents statement of case suggests this fee is a fixed fee charged for all the work anticipated to commence proceedings. In this instance proceedings have not been issued and a warning letter only has been sent. It was not accepted by the Tribunal that this is highly detailed work requiring a Grade A solicitor.

52. If the Respondents chose to instruct a sole practitioner, who is Grade A, to carry out their work, it does not follow that this is a reasonably incurred charge. The Tribunal were of the view that a lower grade solicitor or legal executive could carry out such work, with possibly (depending on the qualification) a short period of supervision by a higher-grade solicitor. £330 plus VAT is allowed for the work actually carried out.

Tribunal fees and S.20C application

53. Finally, we conclude that it would be reasonable in the circumstances to make reimbursement of the hearing and application fee of £300. The claim has merit and the Respondents have breached directions. They failed to send a correct statement of case to the Applicants and sent one to the Tribunal wrongly headed the 'applicants' statement of case, which in any event was late. They sent Counsel to the hearing who was without instructions to clarify issues raised at the hearing. Accordingly, we order that the Respondent should pay to the Applicant the sum of £300 within 28 days.

54. Given the success of the Applicants, we make an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002, considering it just and equitable in the circumstances. This order relates to any service charge liability for costs or administration charges in respect of costs if there be one under the lease, and is in respect of those lessees who are named on the application and are the occupiers of Flats 2, 3, 5, 7, 8, 9, 10.

Judge: D. Brandler

D Brandler

Date: 12th August 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 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 to 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 (ie 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

Section 20C.— Limitation of service charges: costs of proceedings.

(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 First-tier 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 [the 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;
[(ba) in the case of proceedings before the First-tier Tribunal, to the 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 [the 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.

Section 27A Liability to pay service charges: jurisdiction

(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.
(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal] in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Paragraph 5A

(1)A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2)The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a)"litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)"the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.