



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

Case reference : **LON/00AB/LSC/2019/0096**

Property : **Flat 501, Samuel Garside House, De
Pass Gardens, Barking, IG11 0FQ**

Applicant : **Iyer Subramaniyan
Ananthakrishnan**

Representative : **In Person**

First Respondent : **Barking Riverside Limited**

Representative : **Alex Elsy (Regional Manager,
Pinnacle Places Limited)**

Second Respondent : **Adriatic Land 3 (GR1) Limited**

Representative : **Andy Rose (Property Services
Analyst, Residential Management
Group)**

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

Tribunal Members : **Judge Robert Latham
Peter Roberts DipArch RIBA**

**Venue and Date of
Hearing** : **10 Alfred Place, London WC1E 7LR
on 2 August 2019**

Date of decision : **12 August 2019**

DECISION

Decisions of the Tribunal

- (1) The Tribunal records that the parties have made the following concessions:
 - (i) The Respondents have withdrawn their demand against the Applicant in respect of an excess service charge in the sum of £531.79 for 2014/15 and £494.89 for 2015/16.
 - (ii) The Applicant withdrew his challenge to the interim service charge for 2018/19 in the sums of £916.90 (demanded on 10 October 2018) and £916.61 (demanded on 18 February 2019). The Applicant reserves his right to challenge the payability and reasonableness of the service charges demanded for 2018/19 when the service charge accounts for the year are available.
- (2) The Tribunal records that the Respondents have agreed to disclose the following to the Applicant:
 - (i) By 9 August, the First Respondent will provide the Applicant with a copy of the Section 20B Notice served in respect of the 2016/7 financial year;
 - (ii) By 9 August, the Second Respondent will provide the Applicant with a copy of the block service charge accounts for 2016/7;
 - (iii) The First Respondent will use its best endeavours to provide the Applicant by 31 August with a copy of the estate service charge accounts for 2017/8;
 - (iv) The Second Respondent will use its best endeavours to provide the Applicant by 31 August with a copy of the block service charge accounts for 2017/8;
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.
- (4) The Tribunal determines that the First Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. On 15 March 2019, the Applicant issued an application seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the Act”) as to the amount of service charges 2014/5, 2015/6 and

2018/9 in respect of his flat at Flat 501, Samuel Garside House, De Pass Gardens, Barking, IG11 0FQ (“the flat”).

2. On 18 April 2019, the Tribunal issued Directions. It clarified that the appropriate respondents are:

- (i) The freeholder, Barkingside Riverside Limited (“BRL”) which is responsible for the estate charges and has appointed Pinnacle Places Limited (“Pinnacle”) as its managing agents.

- (ii) The immediate landlord of the flat is Adriatic Land 3 (GR1) Limited (Adriatic), being the party responsible for the block service charge. Pinnacle also acted as its managing agents until November 2018 and is responsible for the 2014/5, 2015/6, 2016/7, 2017/8 and part of the 2018/9 service charge years. The current managing agents are Residential Management Group (“RMG”).

3. The Tribunal identified that the following service charges are in dispute:

- (i) An excess service charge of £531.79 payable for 2014/15;

- (ii) An excess service charge of £494.89 payable for 2015/16; and

- (iii) The interim service charge for 2018/19 in the sums of £916.90 (demanded on 10 October 2018) and £916.61 (demanded on 18 February 2019).

4. Pursuant to these Directions, each of the parties have filed separate Bundles of Documents. There is a large amount of duplication. The parties have completed a Scott Schedule.

The Hearing

5. The Applicant appeared in person. He was accompanied by two tenants, Yasir Iman and Ashley Akinfolarin. Neither had provided witness statements. On 9 June 2019, there was a fire at Samuel Garside House. Twenty flats were destroyed. The Applicant’s flat was affected by smoke and water damage. The Applicant is currently residing at temporary accommodation secured by the building’s Insurers. The fire does not impact upon the issues that this Tribunal is required to determine.

6. The Respondents were represented as follows:

- (i) The First Respondent, BRL, were represented by Alex Elsy, a Regional Manager with Pinnacle. He was accompanied by Pamela Ross

(a Director of BRL), Andrew Smillie (Head of Estates at Home Ground who collect the ground rents); Oliver Miller (a Director with Pinnacle); and Sophie Moore (a Property Manager with Pinnacle).

(ii) The Second Respondent was represented by Andy Rose, a Property Services Manager with RMG.

7. Although the issues in dispute were resolved by the parties taking realistic positions, the Tribunal agreed to issue a short decision recording the background to the dispute.

The Background

8. Samuel Garside House is a block of 79 flats, all of which are let on long leases. The block was completed in 2011. It is part of the Barking Riverside Development which is scheduled to be completed by 2030 with a total of some 10,800 dwellings. It includes a significant number of social units.
9. On 3 November 2017, the Applicant acquired the leasehold interest in Flat 501 for £306k. This is a two-bedroom flat which he occupies with his wife and child. This is on the fifth floor. He occupies his flat pursuant to a lease dated 28 August 2013 for a term of 125 years from 1 September 2011.
10. Issues 1 and 2 relate to excess service charges for 2014/5 and 2015/6, service charge years prior to his acquisition of his flat. The Applicant complains that he was not given a realistic indication of the level of service charges when he purchased his flat. The charges are now much higher than had been indicated. During his purchase, his Solicitor required the vendor to give the normal undertaking to discharge all arrears of service charges due on the property up to the date of completion (see A54). The vendor agreed to retain a sum of £400 for the balancing payment for the year 1 August 2017 to 31 July 2018. In response to an enquiry “Is any excess payment anticipated for the Property at the end of the financial period?”, the reply was given: “refer to disclaimer”. The disclaimer read: “We are awaiting client approval for YE 14 Accounts, YE15 is currently being prepared. The accounts are yet to be reconciled and we are not in a position to confirm the balancing charge will be....”.
11. The service charge provisions are to be found in the Fifth and Sixth Schedules of the Lease. There are two elements: “a block charge” levied by the Second Respondent and the “estate charge” levied by the First Respondent. The tenant is required to pay “a fair and reasonable proportion” of these charges.

12. On 24 September 2018, Pinnacle informed the Applicant that his annual service charge would be £1,833.80:

(i) The budget for the Samuel Garside House “block charge” was £108,128 of which he was required to pay 1.4085%, namely £1,522.98.

(i) The budget for the estate charge was £45,797, of which he was required to pay 0.6787%, namely £310.82.

Pinnacle provided budgets for both the block and the estate service charges. The Tribunal was told that the proportion is worked out according to the number of bedrooms in a flat. The formula is “the number of bedrooms in the flat + 1” compared with the whole of the block (or the estate).

13. The lease makes provision for the financial year to be 1 January to 31 December, but gives the landlord the discretion to vary this. Both the First and Second Respondent have elected operate a financial year 1 August to 31 July.

14. As soon as practicable after the end of each financial year, the landlord is obliged to furnish the tenant with the service charge accounts, the amount of the service charge costs to be ascertained and certified. There have been unacceptable delays by both Respondents in providing the tenants with the certified accounts. In the experience of this Tribunal, it should be practicable for a landlord to provide accounts within an outside range of six months after the end of the financial year. Any delay requires an explanation.

15. The lease provides that the tenant shall pay an advance service charge on 1st January. In practice, the Respondents have demanded two six monthly payments in September and February. The Applicant had no objection to this practice. This is to his advantage:

(i) The tenant pays six monthly, rather one larger annual payment.

(ii) The Respondent’s should have draft accounts for the previous year, so that the budget reflects the actual expenditure in the previous year.

16. The Sixth Schedule provides that where there is any surplus between the interim service charge and the actual expenditure, the surplus is to be carried forward to the next financial year. Where there is a shortfall, the Respondents are entitled to demand an excess service charge. Within 28 days of the issue of the certified service charge accounts, the tenant is entitled to inspect the relevant “vouchers and receipts” by prior appointment with the landlord.

Issues 1 and 2: Excess Service Charges for 2014/5 £531.79 and 2015/6 (£494.89).

17. The Directions required the Respondents to disclose all relevant service charge accounts together with all relevant demands for payment. The directions also identified that the Tribunal would need to be satisfied that the sums demanded were payable by reason of Section 20B of the Act.
18. Mr Elsy stated that the following demands had been made:
 - (i) 2014/5: On 26 December 2016, Pinnacle gave the tenants the relevant Section 20B notification that additional relevant costs had been incurred for which they would be required to contribute. On 9 December 2017, Pinnacle had demanded payment of this sum when the service charge accounts had been finalised. The demand was made more than 28 months after the close of the financial year.
 - (i) 2015/6: On 22 May 2017, Pinnacle gave the tenants the relevant Section 20B notification. On 2 May 2018, Pinnacle had demanded payment of this sum when the service charge accounts had been finalised. The demand was made more than 21 months after the close of the financial year.
19. The Respondents had not included any of these documents in their Statements of Case. The relevant Section 20B Notices would have been served on the Applicant's predecessor-in-title. The Applicant had not been given any notice of these in the pre-purchase enquiries.
20. The Tribunal indicated that it would require strict proof of service of all these documents. The Respondents recognised the evidential problems that they faced and agreed to withdraw these claims.
21. The Tribunal records that the Respondents have also agreed to withdraw an administration charge of £54 as a gesture of goodwill.

Issue 3: The Advance Service Charge for 2018/9 (£1,855.86)

22. The Applicant disputed the two interim service charges which had been demanded, namely £916.90 on 10 October 2018 and £916.61 on 18 February 2019. He asserted that there had been an increase of nearly 40% over the past two years. The Second Respondent disputes this in their Statement of Case (at Tab 1). It contends that the budget for 2017/8 was £103,074.96, whilst that for 2018/9 is £108,127.76. This is an increase of £5,052.80 or 4.9%. This seems to relate to the block charge.

23. The First Respondent has provided the “estate” service charge accounts for 2014/5, 2015/6 and 2016/7 when the expenditure was £259,623; £291,807 and £278,848 respectively. Only part of this is apportioned to Samuel Garside House. The Tribunal understands that £47,151.46 was budgeted for Samuel Garside House in 2017/8 and £45,797.00 in 2018/9.
24. The Applicant’s concern rather relates to the “block” service charge. Despite the Directions, the Second Respondent did not provide the relevant estate service charge accounts for 2014/5 to 2016/7. Mr Elsy referred to a document (at R2 Tab 5) whereby the budget for 2018/9 was constructed. The budgeted block expenditure for 2017/8 was £87,624.73 (namely £134,776.19 less £47,151.46), whilst the actual expenditure was £103,074.96. The Second Respondent therefore budgeted a figure of £108,127.76 for 2018/9. The fact that there was a significant overspend in 2017/8 is confirmed by two documents which were provided to the Tribunal (i) the Section 20B Notice which Pinnacle sent to the Applicant on 31 January 2019; and (ii) the draft estate service charge accounts for 2017/8.
25. The Tribunal indicated the difficulty that the Applicant faced in challenging an interim service charge which is based on an estimated budget. His real concern was not with the budgeted expenditure, but rather the actual expenditure. The Applicant agreed and withdrew his challenge to the interim service charge.
26. The Respondents agreed to provide the Applicant with the block service charge accounts for 2016/7 and 2017/8 and the estate service charge accounts for 2017/8. We would expect the Respondents to provide the Applicant with the 2018/9 service charge accounts by 1 February 2020, namely within 6 months of the end of the financial year.
27. Upon receipt of the service charge accounts, the Applicant will need to consider whether he wishes to challenge any of the items of expenditure on the grounds that they are not payable under the terms of his lease or that they have not been reasonably incurred or are of an unreasonable standard. The mere fact that the lift was out of order for a number of weeks is not sufficient. He would need to establish that his landlord had failed to take reasonable steps to remedy the defect. A tenant should consider obtaining alternative quotes if he wishes to argue that any cost is too high. Any case that services have not been of an adequate standard should be supported by clear evidence. It is unclear how the recent fire would impact upon the service charges that are payable.

Application under s.20C and Refund of Fees

28. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Although the Respondents indicated that no costs would be passed through the service charge, for the avoidance

of doubt, the Tribunal nonetheless 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 Respondents may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. The Applicant has also sought an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Such an order is not appropriate as the Respondents do not intend to pass on any litigation costs.

29. At the end of the hearing, the Applicant made an application for a refund of the Tribunal fees of £300 that he had paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders that the First Respondent refund any fees paid by the Applicant within 28 days of the date of this decision.

Judge Robert Latham
12 August 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).