



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

Case reference : **LON/00AC/LSC/2019/0064**

Property : **1 Queens Mansions, Watford Way,
Hendon, London NW4 3AN**

Applicant : **Sulman Habib Rahman**

Representative : **In person**

Respondent : **David Davis and Solomon Israel
Freshwater**

Representative : **Mr Hashi Mohamed of counsel**

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

Tribunal members : **Judge Pittaway
Mr T Sennett MA FCIEH**

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

Date of hearing : **12 June 2019**

Date of decision : **25 July 2019**

DECISION

Decisions of the tribunal

- (1) There are no legal costs claimed by the respondent from the applicant so there is no issue of liability to pay for the tribunal to determine.
- (2) The tribunal determines that the sum of £1,500 is a responsible charge for the estimated cleaning charges for the common parts of the building of which the property forms part, for each of the years to 31 December 2018 and 2019. Accordingly the amount payable by the Applicant in respect of each of those years for the estimated cleaning charge is £250 per year.
- (3) The tribunal makes the determinations for the reasons set out below.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of estimated service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2018 and 2019.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person and the Respondent was represented by Mr Mohamed of counsel.
4. Immediately prior to the hearing the applicant handed in a written request for the tribunal to make an order under section 20C preventing the landlord recovering the costs of the proceedings through the service charge.
5. At the hearing the tribunal directed that the applicant should within seven days provide it with a copy of a previous tribunal decision referred to by the applicant when making submissions, with a copy being sent to the respondent who would then have seven days to make representations on that decision. Pursuant to those directions the applicant sent, on 14 June 2019, a Consent Order (not a tribunal decision) dated 9 March 2012 in which the cleaning charge for the years 2007 to 2011 were agreed at £1,250 per annum.

6. At the hearing the tribunal further directed that the respondent should have seven days after receipt of the previous decision referred to by the applicant to make representations to the tribunal in relation to it. On 26 June 2019 the tribunal received a response from the respondent; pointing out that the document filed by the applicant was an unsigned (by the counter-party) and unsealed consent order. The respondent submits this only purports to evidence agreement of the cleaning charges for the years 2007 to 2011 with the respondent's predecessor in title; that it has already been agreed by the parties that all service charge disputes relating to payments before 1 January 2018 have been settled; and that the content of the consent order does not affect the respondent's right to seek a higher contribution from the leaseholders with regard to cleaning costs following 2011, provided that the costs are reasonable.

The background

7. The property which is the subject of this application is a four bedroom flat on the first floor of a four storey building arranged as commercial premises on the ground floor and six flats, 1-6 Queens Mansions, arranged on the first, second and third floor of the building with two flats on each floor.
8. Photographs of the aspects of the common parts were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The Applicant holds a long lease 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. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the Applicant was liable to pay legal costs of £5,568.93; and
 - (ii) Whether cleaning costs in the estimated sum of £6618 for the service charge year to 31 December 2018 and estimated cleaning costs sum of £6,336 for 2019 were reasonable.

The tribunal's decisions and reasons

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

Legal costs

12. The applicant listed in his Statement of Case legal costs in the sum of £17,163.84 included in the Respondents' service charge demands. He submitted that all of this sum should be covered by the County Court Consent Order dated 1 September 2018, which provided "There be no order as to costs". He also drew the tribunal's attention to the credit of £11,594.91 which had been made by the respondent in its "Lease Statement" set out as Exhibit A to the respondent's statement of case, leaving a balance of £5,568.93 payable by way of legal fees.
13. Counsel to the respondent explained to the tribunal that there were no outstanding legal fees owed by the applicant to the respondent. The apparent balance of £5,568.93 had been notionally included by the respondent in the settlement sum of £20,500 agreed in the County Court which is why a credit of only £11,594.91 appeared in the Lease Statement. Counsel to the applicant confirmed to the tribunal that there were no legal fees included in the balancing sum of £4,772.60 shown on the Lease Statement as being owed by the applicant. He confirmed that this is primarily made up of an excess service charge sum of £2,432.65 shown on the Lease Statement as due on 15 June 2018, and on account service charge of £1,518.38 for the period 25 December 2018 to 23 June 2019, both of which sums fell due after the date of the application to the County Court which resulted in the County Court Consent Order, and which were therefore not included in it.
14. The tribunal makes no determination as to liability to pay or the reasonableness of any legal costs as it is satisfied on the basis of the evidence heard from the respondent that the respondent is claiming no legal fees from the applicant by way of service charge.

Cleaning Costs

15. The applicant's case was that costs to clean the communal areas in the sum of £6618 for the service charge year to 31 December 2018 and estimated cleaning costs sum of £6,336 for 2019 are excessive;
 - (i) The area cleaned is small;
 - (ii) He provided the tribunal with the service charge expenditure statement for 7-18 Queens Mansions for the service charge year

ended 30 June 2018, where the actual service charge cost of cleaning the common parts was £1,872;

- (iii) He referred the tribunal to the far lower charge levied by the Respondents in the service charge years 2013 to 2015 (of £560 in each year); and
 - (iv) Photographs were including in the hearing bundle to show that the cleaning was not being undertaken as contracted.
16. The respondent submitted that the charges were reasonable for a cleaning service of eight hours a week at a rate of £15 per hour, and that the charges had attracted VAT in the more recent years. As to the jump in charge from £560 per annum Mr Mohamed submitted that the respondent believed that the charges in the earlier years had in fact been subsidised.
 17. Mr Rahman submitted that the lower level of charge was in fact the result of an earlier tribunal decision. As this was not before the tribunal at the hearing the tribunal requested that this be provided to them within a week of the hearing and that the respondent the have a further seven days to make representations of that decision. Mr Rahman also provided details of annual communal cleaning charges in two other blocks; 7-18 Queens Mansions (of £1,872 p.a. for the year ended 30 June 2018) and Parade Mansions (£6,329 p.a. for the year to December 2018), both also in Watford Way.
 18. The tribunal note that the decision of 9 March 2009 provided by Mr Rahman is in fact an agreement made between the parties and not a tribunal decision. In it the cleaning charges for the service charge years ending 31 December 2007 to December 2011 were apparently agreed at £1,250.00 inclusive of VAT per annum.
 19. The tribunal accept the respondent's submissions that this only purports to evidence agreement of the cleaning charges for the years 2007 to 2011 with the respondent's predecessor in title as it is not signed by the then landlord. The tribunal also accepts that by the County Court Consent Order dated 1 September 2018 all service charge disputes relating to payments before 1 January 2018 have been settled.
 20. The tribunal does not accept the respondent's submission that the content of the 2009 consent order does not affect the respondent's right to seek a higher contribution from the leaseholders with regard to cleaning costs following 2011. As admitted by the respondent the County Court Consent Order dated 1 September settled all service charge disputes before 1 January 2018.

21. Turning to the estimated cleaning costs for the years to 31 December 2018 and 2019 the tribunal preferred Mr Rahman's evidence as to the level of cleaning undertaken at the property to that of the respondent. The tribunal considers the estimated charges of £6618 for the service charge year to 31 December 2018 and estimated cleaning costs sum of £6,336 for 2019 to be unreasonable given the evidence which the tribunal heard as to the size of the common parts; the length of time it is likely to take to clean these and the frequency with which the cleaning apparently took place. On the basis of the evidence before the tribunal it finds it difficult to believe that the applicant's cleaner spent between three and four hours twice weekly on cleaning the common parts, which was the basis of the respondent's estimated charge.
22. Accordingly it is necessary for the tribunal to determine what would be a reasonable level of costs. It considers that the best evidence available to it as to a reasonable cost is the evidence that the applicant provided as to the actual cost of cleaning the common parts of the adjacent block of flats, not owned by the respondent, 7-18 Queens Mansions, for the service charge year ending 30 June 2018. The actual charge to that block for the year to June 2018 was £1,800. The tribunal consider that this evidence (which is in respect of a block of twelve rather than six flats) is better than the alternative estimate that the applicant provided of £6,329 paid for the cleaning of the common parts of Parade Mansions in Watford Way, which is a block of 50 flats.
23. Using this as their starting point the tribunal have had regard to the fewer flats in the block in which the property is (which should result in less cleaning being required). It has noted the apparent preparedness of the respondent's predecessor to agree a charge of £1,250 per annum for the service but had not attached weight to this figure. Nor has the tribunal considered the charge of £560 to evidence a realistic charge for the service. It accepts the respondent's submission that this (for whatever reason) may have been a subsidised charge.
24. The tribunal accordingly determine that a charge of £1500 per annum (i.e. £250 per annum per flat) to be a reasonable estimated charge for both the years in question.

Application under s.20C

25. Immediately before the hearing, the applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations 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, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Pittaway

Date: 25 July 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.

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).