FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2019/0213**
Property	**:**	**Flat 4, 8 Lancaster Road, London SE25 4AQ**
Applicant	**:**	**Mr. Akeem Adisa Akinremi Fabunmi**
Representative	**:**	**& E Solicitors**
Respondent	**:**	**Baysfield Technology Limited**
Representative	**:**	**Tate Residential Limited**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge and an administration charge**
Tribunal members	**:**	**Judge Tagliavini**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**28th August 2019**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the managing agents fees for the service charge years 2017, 2018 and 2019 should be reduced to £250 (plus VAT) per annum which is to be pro-rated for the period 12/12/16 to 24/12/16.

(2) The administration charges of £120 are not payable by the Applicant.

(3) In the absence of any evidence the tribunal makes no determination as to the sums alleged to be claimed as "additional rent."

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness of the managing agent's fees charged by the Respondent in respect of the service charge years 2017, 2018 and 2019. The Applicant also challenges the reasonableness of an administration charge of £120 per letter for 'reminder' letters in each of these years under the provisions of paragraph 5 schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Neither party requested an oral hearing and therefore the tribunal determined this matter on the documents provided and contained in an indexed and numbered bundle.

The background

4. The premise which is the subject of this application is a two bedroom flat in a building comprising five flats.

5. The Applicant holds a long lease of the property dated 19th May 2016 and granted under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 for a term of 189 years, beginning on and including 25th December 1985, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

6. The relevant issues for determination as follows:

   (i) The reasonableness of service charges for 2017, 2018 and 2019 relating to managing agents fees totalling £2,539.13.

   (ii) The reasonableness of administration charges in the sum of £100 plus VAT for the sending of each 'reminder' letters in the years 2017, 2018 and 2019.

   (iii) The reasonableness and liability to pay sums deemed to be 'additional rent'.

The Applicant's case

7. In a witness statements (undated and unsigned) together with a number of exhibits, the Applicant stated that the service charge year is calculated to run from 24th December of each year. However, in 2017 two payments were claimed in respect of managing agents fees although previous such charges were made only once per year. The Applicant stated that managing agent fees have increased each year since 2017 and represent approximately 50% of the annual service charges of £1,700 (approximately) despite the subject property requiring little in the way of management.

7. In a further witness statement made on the Applicant's behalf by Mr. Samson Odunlami, solicitor and dated 12/09/2019 the Applicant asserted that comparable evidence from BMS had been obtained in respect of the managing agents fees that would be considered reasonable for a property similar to the subject property. This evidence showed that managing agents fees of £211.74 (plus VAT) per flat were charged for a property containing 4 flats as at 2019.

The Respondent's case

8. The Respondent relied upon a Statement dated 2nd August 2019 from Mr. Paul H Tate, director of Tate Residential Ltd it was asserted that the following fees were charged that were attributed to managing agents fees charged to the Applicant. These comprised:

   (i) 2016/2017 – £2175.93 (plus VAT)

   This sum including a set up fees of £475.00; a £750 managing agent's fee for the period 25/12/16 to 24/06/2017 and £375 for the period 25/06/2017 to 24/09/2017 and £375.00 for the period 25/09/17 to 24/12/2017 as well as some smaller items making up the total.

(ii) 2017/2018 – £1853 plus VAT

This sum comprised 4 charges for managing agents fees of £389.63 each representing a three months period and £249.91 for arranging a survey of the external common parts of the property.

(iii) 2018/2019 - £779.26 plus VAT (1/2 yearly period)

This comprised two sums of £389.63 in respect of managing agents fees.

9. Mr. Tate stated that the managing agents had been appointed on 12th December 2016 and since then managing agent fees were charged at the rate of £62.50 per hour for a Block Manager who provides 25 hours of management by a trained member of staff who is reasonably salaried visiting the property once a quarter and accounting for 8 to 10 hours per annum (including travel time). Mr. Tate state that the managing agents are responsible for the arrangement and overseeing of insurance, safety certificates and the arrangement for repairs including section 20 consultation for prosed major works.

The tribunal's decision

10. The tribunal determines that the amount payable in respect of £250 per annuum (plus VAT) is reasonable and payable for the service charge years 2016/2017; 2017/2018 and 2018/2019. This sum should be pro - rated for the period 12/12/16 to 24/12/16.

11. The tribunal finds that the administration fees are not provided for in the lease and are therefore the sums of £120 per letter (x3) are not chargeable to or payable by the Applicant.

12. In the absence of any explanation for or evidence from either party, the tribunal makes no determination as to the sums alleged to be claimed as "additional rent."

Reasons for the tribunal's decision

13. The tribunal finds that the lease defines a service charges as the period from the 25th December of one year to same date in the following year. The tribunal also finds that managing agent fees are included in the services that are to be contributed to by the Applicant at half-yearly instalments on the first day of the maintenance year (25/12) and six calendar months thereafter (25/6).

14. The tribunal finds that the managing agents practice of charging at three monthly intervals does not accord with the terms of the lease and

therefore those sums that have been demanded at incorrect intervals are not payable until correctly demanded in accordance with the terms of the lease.

15. The tribunal finds that the managing agents fees of £375 and £389.63 per quarter are excessive. The tribunal finds the Respondent's written evidence, to]lack clarity and an explanation as to why this property comprising a total of five flat requires the attention of managing agents at a total cost from the 5 flats of £7,500 (approximately) per annum. Mr. Tate does not explain who the salaried member of staff is or their qualifications and experience to manage the subject property or the level of their salary. Similarly, Mr. Tate provides no explanation as to how the 'setting up' costs were incurred for this modest building of five flats. Further, the tribunal would reasonably expect the costs of arranging for the provision of safety certificates, the carrying out of repairs and the service of initial notes to form part of the managing agents annual fees and not to be charged as additional sums.

16. The tribunal notes that Mr. Tate made no reference to the terms of the lease that make provision for the charging of administration fees. Having had sight of the lease (both in its original form and as extended) the tribunal finds it makes no reference to such sums being chargeable to the Applicant. Therefore, the tribunal determines that the administration charges of £120 per letter are not payable by the Applicant. In an event, the tribunal determines that these sums are without any explanation as to how they have been calculated and finds them to be grossly excessive.

17. Therefore, the tribunal determines that the total reasonable annual management fee for the service charge years 2016/2017, 2017/18 and 2018/2019 is £250 plus VAT with no additional costs to be added for the items claimed by the managing agent in respect of the 2016/17 costs of £475.00 setting up costs; £18.00 valuation fee; £18.00 arranging electrician safety testing and £107.40 for arranging remedial works to the electrics and light and 2017/18 costs of £294.91 for arranging the survey of external common parts.

<u>Application under s.20C and paragraph 5A/schedule 11</u>

18. In the application, the Applicant applied for an order under both section 20C of the 1985 Act and paragraph 5A of the 2002 Act. Neither party made any written representations in respect of these issues. However, in light of the tribunal's findings and determinations the tribunal also determines that it is appropriate to make an order under section 20C preventing the Respondent from adding the costs incurred as a result of the application to the service charges. Further, as found by the tribunal, there is no provision on the lease for administration charges and therefore the tribunal determines that any such charges cannot and are not to be recovered from the Applicant.

Name: Judge Tagliavini **Dated: 28th 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).

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).