



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

Case Reference : **LON/00BG/LSC/2019/0071**

Property : **Apartment 147, 1 Prescott Street,
London E1 8RL**

Applicant : **Prescot Management Co Ltd**

Representative : **Colman Coyle Ltd
Mr Robert Brown, counsel**

Respondent : **Rini Laskar**

Representative : **Mr Zahid Khan**

Type of Application : **Liability to pay service charges**

Tribunal : **Judge Nicol
Mr K Ridgeway MRICS
Mr O N Miller**

**Date and Venue of
Hearing** : **29th July 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **12th August 2019**

DECISION

Decisions of the Tribunal

- (1) The charges claimed by the Applicant, namely £8,118.91 in each of 2018 and 2019 and interest thereon of £786.98, are payable by the Respondent.
- (2) There shall be no order under section 20C of the Landlord and Tenant Act 1985.
- (3) The following directions are made for the determination of the Applicant's application for the Respondent to pay their costs under

rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013:

- a. The Applicant having already provided their submissions in support of the costs application, including a statement of costs, the Respondent shall, by 4pm on **30th August 2019**, send to the Applicant and file with the Tribunal a supplementary bundle containing her written submissions in response to those of the Applicant, including any comments on the statement of costs, and any further documents relied on which were not already in the bundles before the Tribunal.
- b. The Applicant shall, by 4pm on **13th September 2019**, send to the Respondent and file with the Tribunal a supplementary bundle containing any further written submissions in response to those of the Respondent and any further documents relied on which were not already in the bundles before the Tribunal.
- c. The Tribunal will determine the costs application in the light of the parties' written submissions, without a hearing, as soon as possible after **16th September 2019**.

Relevant legislative provisions are set out in Appendix 1 to this decision.

The Tribunal's Reasons

1. The Applicant is the lessee-owned management company and the Respondent is the lessee of the subject property, one of 150 flats in a converted office block. The Respondent's lease is for a term of 999 years from 1st January 1997 and includes the following terms:
 - Under clauses 3 and 4 the Respondent covenants with the Applicant to perform and observe the obligations in the Fourth and Fifth Schedules respectively and similarly, under clauses 5 and 6, the Applicant's obligations are in the Sixth and Seventh Schedules.
 - Under clause 11 of the Fourth Schedule, the Respondent must indemnify the Applicant against the costs (grouped in three categories, A, B and C) which they incur in complying with their obligations in the Sixth Schedule.
 - Under clause 12 of the Fourth Schedule, the Respondent must pay on 1st January each year such sum as the Applicant shall estimate to be the amount prospectively payable under clause 11.
 - Under clause 13 of the Fourth Schedule, the Respondent must pay any balance owing to the Applicant within 21 days after receipt of the certification provided for in the Sixth Schedule.
 - Clause 3 of the Sixth Schedule is set out here in full:

[The Applicant is] To keep or cause to be kept proper books of account of all costs charges and expenses incurred by the [Applicant] or the Landlord in carrying out its obligations under this schedule or in otherwise managing and administering the Block and in each year during the Term to prepare a certificate of

(a) the total amount of such costs charges and expenses for the period to which the certificate relates and

(b) the proportionate amount due from the [Respondent] to the [Applicant] under the provisions set out in the Fourth Schedule hereto after taking into account payments made in advance under the provisions set out in the same Schedule and forthwith to send a copy of the same to the [Respondent]

2. The Respondent took her interest in the lease from her partner, Mr Zahid Khan, in 2014. Mr Khan is still closely involved and has been the Respondent's representative throughout these proceedings, including at the final hearing. Mr Khan has disputed the service charges for many years. In 2006 he issued High Court proceedings challenging the Applicant's right to recover legal costs through the service charge – he was unsuccessful. In 2009 he issued applications in this Tribunal challenging the managing agent and accountancy fees and seeking the appointment of a manager – again, he was unsuccessful. Proceedings brought by the Applicant in 2017 against the Respondent for unpaid service charges were settled by agreement between the parties without the need for a further determination.

3. It seems that the Tribunal not only held against Mr Khan but took a dim view of his conduct. In its determination dated 13th July 2009 (ref: LON/00BG/LAM/2009/0008), the Tribunal stated,

The Tribunal considered that the application as currently formulated had no prospect of success, so that it was frivolous and vexatious and an abuse of process. So clear did we consider this that we did not consider it necessary to call on [counsel for the Applicant] to reply.

4. In paragraph 112 of its determination dated 9th March 2010 (ref: LON/00BG/LSC/2009/0432), the Tribunal stated,

[Mr Khan]'s case has almost wholly failed. When examined in detail sums claimed as unreasonable had been inflated. [Mr Khan]'s past litigation history against the [Applicant] has been unattractive and found to be without merit. Evidence/cross examination on behalf of [Mr Khan] in the present proceedings bordered on the abusive.

5. Mr Khan claimed at the Tribunal hearing that he and the Respondent had been subjected to severe harassment by members and staff of the Applicant company, including instances of perjury and breaches of company law. He asserted that he and the Respondent had a right to damages which would largely offset any liability to the Applicant. The

Tribunal pointed out that he had failed to give proper notice of any such claim. There were references in some documents in the bundle to harassment, perjury and other matters but neither Mr Khan nor the Respondent had set out any particulars, including dates, times or details of loss or even that either of them intended to make any such claim within these proceedings. After the lunch break in the hearing, Mr Khan sought an adjournment so that he and the Respondent could get proper legal advice on formulating such a claim but the Tribunal rejected it as being far too late in the proceedings. The Tribunal pointed out to him that this would not bar him from bringing such a claim separately at a later date.

6. The current proceedings were brought by the Applicant seeking a determination as to the payability of the estimated charges for the most recent two years, £8,118.91 in each of 2018 and 2019. The Respondent seemed to think that the charges for the year 2017 were also in dispute but they were not in the application and so not before the Tribunal. Mr Khan also asserted a distinction between “lawful” and “payable” but, in this context, that is the same thing – a lawful charge is payable.
7. The Respondent put forward two reasons as to why these charges should not be regarded as payable. Firstly, Mr Khan submitted that the production of certified accounts was a pre-condition to payability and that no such accounts had ever been produced, let alone for the two relevant years. He felt so strongly about this argument that he asserted that the application should be struck out.
8. Mr Khan based his submissions on clause 3 of the Sixth Schedule to the lease, reproduced in paragraph 1 above. However, he has misunderstood it in a number of ways:
 - (a) It is good accountancy practice for service charge accounts to be certified by an independent accountant but there is no requirement for this in the lease. The reference to a certificate in clause 3 is only to one produced by the Applicant containing two items of information, namely the total costs incurred and the Respondent’s share of those costs.
 - (b) The lease does not specify the form of the certificate. The Applicant’s witness, Mr Ben Hallows of the managing agents, Islington Properties, said that he regarded the annual accounts (containing the total costs incurred) accompanied by a service charge demand (containing the Respondent’s share of those costs) as constituting the requisite certification. The Tribunal is satisfied that this complies with the terms of the lease.
 - (c) Further, the certificate referred to in clause 3 has to be produced after the accounts have been finalised which, by definition, is after the costs have been incurred. The sums sought by the Applicant in this case are estimates of future expenditure. Clause 3 simply does not apply to such estimates.
 - (d) Indeed, clause 3 of the Sixth Schedule ties in with the obligation to pay any balance owing in clause 13 of the Fourth Schedule. The obligation

to pay the sums claimed in these proceedings is in clause 12 which contains no reference to any accounts or certification.

- (e) Mr Khan submitted that the requisite certificate for one year must be produced before the estimates for the following year, without which any charge based on those estimates would not be payable. Clause 3 contains no such obligation but there is also a practical difficulty. Estimates must be produced before the end of the year and accounts after the end of the year. It is impossible for a certificate derived from such accounts to be provided before such estimates.
9. In short, there is no requirement for a certificate of any kind prior to estimated charges being payable. The Respondent's second argument was that her service charge demands had not been accompanied by the Summary of Rights and Obligations required under section 21B of the Landlord and Tenant Act 1985.
 10. Unfortunately, and without any explanation, the Respondent did not attend the Tribunal hearing to speak to and be cross-examined on her two witness statements. In contrast, Mr Hallows was able to tell the Tribunal that his firm uses a template of which the requisite Summary is an inseparable part so that it is impossible to send a demand without the Summary. The Tribunal is satisfied that the demands were accompanied by the Summary.
 11. Clause 7(b) of the lease entitles the Applicant to charge a minimum of 10% interest on unpaid service charges. In relation to the two years' estimated charges in this case, the Applicant has formally demanded interest in the sum of £786.98 and sought the Tribunal's determination that this was payable by the Respondent as an administration charge. The Tribunal is satisfied that it is so payable. Further interest may be demanded but that is not a matter for this Tribunal in these proceedings.
 12. The Respondent made her own application under section 20C of the Landlord and Tenant Act 1985 for an order that the Applicant should be prohibited from adding their legal costs from these proceedings to the service charge. Mr Khan's principal submission in this respect was that the Applicant had no need to resort to litigation. In the past, he and his partner had always paid any charges demanded without prejudice to their contentions as to those charges not being payable. Mr Khan argued that the Applicant should have realised that this pattern was equally applicable to the current charges.
 13. There is a fundamental flaw in Mr Khan's argument. Even if it is accepted that he and his partner had established a pattern of payment in the past, that pattern was not repeated in relation to the current charges. The Respondent did not pay the current charges, even without prejudice to her objections as to payability. The Applicant had no reason to think that the Respondent was about to pay the sums demanded. On the contrary, in letters dated 5th November and 21st December 2018 she made offers of just £100 and £200 respectively in

full and final settlement of the 2018 charges. No reasonable person would consider such small sums to be genuine attempts to open proper negotiations. Mr Khan suggested that the offers were reasonable after offsetting the value of the aforementioned claim for harassment but neither letter made any mention of any such claim.

14. The Tribunal has effectively decided that the Respondent had no good reason for withholding payment of the charges and the Applicant was justified in resorting to litigation. Therefore, in the circumstances, there is no basis for an order under section 20C and the Tribunal refuses to make one.

Name: NK Nicol

Date: 12th August 2019

Appendix 1 – 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 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.

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.