



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

Case reference : **LON/00AP/LSC/2019/0261**

Property : **27a Crescent Road, London N8 8AL**

Applicants : **Richard Forshaw
Georgina Billingham**

Respondent : **Dilip Ramanbhai Amin**

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

Tribunal members : **Judge Daley
Mr W R Shaw FRICS**

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

Date of decision : **15 October 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £ 3715.26 as set out in the application is not payable by the Applicants pursuant to Section 20B of the Landlord and Tenant Act 1985 in respect of the service charges for the years 2013/14, 2014/15, 2015/16, 2016/17.
- (2) 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.
- (3) Further the Tribunal makes an order that the cost of the Tribunal proceedings shall not be recoverable as Administration charges pursuant to paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The application

1. The First Applicant sought 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 service charges and administration charges payable by the Applicant in respect of the service charge years 2013-2016/17.
2. Directions were given on 19 July 2019 in which the following issue was identified -: " (i)The reasonableness and payability of service charges including insurance costs in respect of the following years...(ii)whether the costs are payable by reason of section 20B of the 1985 Act. (iii) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made.
3. The Tribunal also directed that the application was to be determined without a hearing unless either party made a request for a hearing before 23 August 2019.
4. On 24 July 2019 Ms Georgina Billingham made an application to be joined as an applicant to these proceedings. The application was granted on 31 July 2019.
5. The Directions dated 19 July 2019, directed that the landlord (the Respondent in these proceedings, Mr Amin) should by 30 August 2019, sent to the tenant (the Applicants) a schedule responding to the issues raised by the Applicants, copies of invoices and a statement of his case, and any witness statements which he intended to reply on. The

Respondent did not comply with the Directions, the Tribunal has therefore determined this matter on the basis of the documents provided by the first Applicant (Mr Forshaw) described as ‘a pack of historic demands and insurance schedules’ provided to the Applicant by hand on 20 June 2019.

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

The background

7. The property which is the subject of the application is a house which has been converted into 4 flats. The first Applicant is the leaseholder of the two bedroom ground floor flat the second Applicant Ms Billingham is the leaseholder of flat B.
8. The Applicants 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, are referred to in paragraph 9 below.
9. Clause 3 (C) which requires the Lessor to pay a proportionate part of the reasonable expenses and outgoings which are incurred by the Lessor in the “...*necessary repair maintenance renewal and insurance of the building*”. Clause 3(C) (i) states:- *The amount of the service charge shall be ascertained and certified annually by a certificate...signed by the Surveyor so soon after the end of the Lessor’s financial year as may be practicable and shall relate to such year in manner hereinafter mentioned*”. Sub- paragraph (ii) defines “*the Lessor’s financial year as the period from the twenty-fourth day of June or such other annual period as the Lessor may in its discretion from time to time determine...*” Sub-paragraph (iii) provides that a copy of the certificate of each such financial year shall be supplied by the Lessor to the Lessee without Charge
10. The Applicants’ case is set out in the Application dated 9 July 2019. Briefly stated, the Applicants assert that the freeholder (the Respondent) was asking for 5 years of historic service charges which included the building insurance. The freeholder was also refusing to carry out any work or take any action on freehold matters until the debt was cleared.
11. The Mr Forshaw stated that he visited the freeholder at the freeholders address in 2018 as the Applicant was seeking to sell his flat and sought answers to purchaser enquires. He stated that the freeholder refused to provide any freehold services until he settled the service charges. The first Applicant asked to be provided with a service charge demand and followed up this request by email. The Respondent did not serve any

demands until 20 June 2019 when the first applicant visited the freeholder's premises and was handed the information referred to in paragraph 5.

12. The tribunal has reached its decision on the basis of the documents before it which have been referred to above.

The tribunal's decision and Reasons for the tribunal's decision

13. The tribunal has determined that the service charges are not payable by the applicants. The reasons for this are set out below.
14. A service charge is only payable if it firstly complies with the terms of the lease, and secondly has been demanded in a manner which complies with any statutory requirements.
15. Clause 3 (C) provides that the landlord should serve a surveyor's certificate, the respondent has not produced a certificate setting out the service charges that are payable in accordance with the terms of the lease.
16. The Service Charges (Summary of Rights and Obligations) (England) Regulations 2007 which states 3. "...Where these Regulations apply the summary of rights and obligations must accompany a demand for the payment of a service charges..." The Tribunal noted that the information served as demands did not comply with this requirement.

The Tribunal also determined that the provisions of 20B (1) apply, that is that it would appear in the absence of any evidence supplied by the respondent, that the services were provided more than 18 months before the demands were served on the applicants.

17. **Application under s.20C and refund of fees** applied for an order under section 20C of the 1985 Act and also under Schedule 5 of Schedule 11 of The 2002 Act. 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 and by way of an Administration Charge.
18. The First Applicant made an application for a refund of the fees that he had paid in respect of the application. Taking into account the

determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant [within 28 days of the date of this decision].

Name: Judge Daley

Date: 15 October 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 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 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).