



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

Case reference : **LON/00BD/LSC/2019/0228**

Property : **Flat 24 Milton Lodge Whitton Road
Twickenham Middx TW 1 BU**

Applicant : **Milton Lodge (Twickenham) Ltd**

Respondent : **Roundlistic Limited**

In attendance : **Ms Emma Thompson and Mr Leo
Thivent on behalf of the Applicant
Mr Barry Marsh
Ms Holly Marsh –Director on
behalf of the Respondent**

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

Tribunal members : **Judge Daley
Mr P Casey MRICS**

Date and Venue : **16 October 2019 at 1.30 pm, 10
Alfred Place, London WC1E 7LR**

Date of decision : **28 October 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant's is not entitled to recovery for alleged overpayment of service charges for the periods preceding 2003
- (2) That there being no issue as to the reasonableness and payability of the service charges of £5233.36. The tribunal determines that this sum is reasonable and payable.
- (3) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985. Further the Tribunal makes no 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.
- (4) This case shall be returned to the County Court for further order,

The application and background

1. By an undated claim form the Applicant's issued a claim in the County Court Money Claim Centre for the sum of £5233.36 unpaid service charges and court cost.
2. On 12 December 2018 the Respondent filed a defence in which he counterclaimed for 26 years of service charges which he claimed had been over charged in respect of the service charges. He sought the return of the service charges which he claimed in the sum of £4918.69 plus the Court fees.
3. On 13 December District Judge Henry transferred this matter of the Court's own motion to the First-tier Property Tribunal.
4. Directions were given by the Tribunal on 18 July 2019. The Directions required the Respondent to send to the Applicant a statement of case setting out how much and over what period of time the Respondent alleged that the company had been overcharged. The hearing was attended by Mr Marsh and Ms Thompson.
5. On 19 September 2019 Mr Marsh on behalf of the Respondent wrote to the Tribunal stating that he had asked for Ms Thompson to call Mr T Burr of Parkgate Aspen Property Management to give evidence in these proceedings. The Applicant's solicitor responded that she did not intend to call him and had indicated that he was not a director of their

client's company or an employee of their clients managing agent's. Mr Marsh sought a Witness summons which was granted on 27 September 2019 in respect of Mr Burr.

6. Mr Burr did not attend the hearing in response to the summons. However, the Tribunal did not consider his attendance necessary for a fair disposal of this matter and was content to proceed in the absence of Mr Burr.

The Hearing

7. The hearing was attended by the parties listed above. Ms Thompson informed the Tribunal that the Applicant accepted that the wrong percentage had been applied to the Respondent's accounts and that it should have been 4% instead of 4.5% by reference to the terms of the lease. She stated that the error may have arisen as the Applicant had some properties in Milton Lodge that were charged 4.5% and some which were charged 4%. She was not able to say how the error arose or over what length of time the respondent had been charged at 4.5% of the service charges.
8. She referred the Tribunal to two letters, one dated 2 July 2015 in which the error had been acknowledged and the sum of £1800.58 had been agreed as a sum to be credited to the Respondent's accounts and a further letter dated 22 January 2016 in which a further adjustment had been agreed making a total credit of £2,935.07. She provided a statement of account which had the credit entries on the account.
9. She stated this credit had been worked out based on the service charges paid between 2003 and 2016 when this issue arose. She stated that the Applicant did not own the property before that date, and were not able to produce accounts that went back that far, she also placed reliance upon the Limitation Act 1980.
10. Mr Marsh and Ms Marsh made a number of points. Firstly, he accepted that the sums had been paid, however he had not received any compound interest on the sum. Neither had they been able to satisfy themselves as to how the monies had been spent by the applicants and whether other leaseholders had been overcharged. The Respondent had at one stage owned the freehold, and on the sale of the freehold to Milton Lodge he had become a leaseholder, who had then participated in the enfranchisement of the premises in 5 January 2005. He stated that there was no evidence that the overpayment had started in 2003, and it was his case that the overpayment extended throughout the period of his lease which was 26 years. He did not have any documents such as service charge demands, which without Mr Burr records could confirm that they had overpaid throughout the period of the lease.

11. The Tribunal noted that the respondent's representatives had no information or documents that confirmed the overpayment had been for the period of their claim. The only information was for the last 12 years. The Tribunal noted that the respondent's representatives had not filed a statement of case so it was difficult to work out exactly how they had quantified their claim.
12. Mr Marsh stated that they did not have records which went back that far. He stated that Mr Burr had managed the property and would have that information. He did not accept that the limitation period applied. He acknowledged that he did not take issue with the reasonableness of the service charge and he accepted that sums had been paid back for some of the period in issue although he considered that interest should have been applied.

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

13. The Tribunal made its decision on the basis of the documentary evidence before it and the submissions of the parties
14. The Tribunal did not consider it necessary to refer to provisions of The Limitation Act 1980 in reaching its decision, and accordingly has not referred to the terms of the act.
15. The Tribunal found that the service charges of £5233.36 are reasonable and payable. The Respondents' directors acknowledged that they had not withheld the charges a result of any issues with the sums charged or the standard of services. They had found that they had been overpaying service charges and had suspected, without any evidence that this had been throughout the duration of their lease term. The Tribunal is unable in the absence of any evidence to make a finding that this occurred.
16. The Respondent's did not advance the case that had been made in the county court pleadings, and other than asking for Mr Burr to give evidence had no information upon which to support their submissions.
17. The Tribunal considers that had Mr Burr attended and been called this would have amounted to a fishing expedition.
18. The Tribunal is satisfied that the Applicant has repaid the sums overcharged which are capable of being proved and accordingly the Tribunal finds that the Respondent is not entitled to a set off.

Application under s.20C

19. Taking into account the determinations above, the tribunal has decided in accordance with our findings to make no order under section 20C of the 1985 Act.

The next steps

20. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court.

Name: Judge Daley

Date:
28/10/19

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).