**FIRST-TIER TRIBUNAL**

**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

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| **Reference** | **:** | **LON/00AB/LSC/2019/0260** |
| **Property** | **:** | **87D Broad Street, Dagenham, Essex RM10 9HP** |
| **Applicant** | **:** | **GR Management Property Ltd** |
| **Representative** | **:** | **Ms B Kleopa of counsel** |
| **Respondent** | **:** | **Ms H Baldwin** |
| **Representative** | **:** | |
| **Type of application** | **:** | **For the determination of the reasonableness of and the liability to pay service and administration charges** |
| **Tribunal members** | **:** | **Judge S Brilliant**<br>**Mr M Taylor FRICS** |
| **Venue** | **:** | **10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | **:** | **19 November 2019** |

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**DECISION**

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## Decisions of the Tribunal

The Tribunal determines that the following sums are payable by the Respondent in respect of service and administration charges:

(1) Advance service charge due on 1 October 2017: £1,224.33.

(2) Advance service charge due on 24 June 2018: £1,680.00.

(3) Advance service charge due on 23 July 2018: £8,916.34.

(4) Administration charges: £343.00.

(5) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 that none or part only of the Applicant's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(6) References in this decision are to the tab and page number in the bundle prepared by the Applicant.

## The application

1. On 26 November 2018, the Applicant issued proceedings in the County Court Money Claims Centre against the Respondent for unpaid service charges and administration charges [4/40-49]. By the time of this hearing the amounts in dispute were as follows:

(1) Advance service charge due on 1 October 2017: £1,224.33.

(2) Advance service charge due on 24 June 2018: £1,680.00.

(3) Advance service charge due on 23 July 2018: £8,916.34.

(4) Administration Charge £343.00.

This totals £12,163 .67.

2. The Respondent put in a lengthy Defence and Counterclaim dated 23 January 2019 [7/55-64].

3. The Respondent's case included, amongst other things, the following allegations:

(1) The lease relied upon by the Applicant was a forgery.

(2) GR Management Property Ltd was not the Respondent's landlord or the registered proprietor of the freehold of her flat.

(3) The amounts demanded as advance service charges were not due and owing, and were a pure fabrication.

(4) The Applicant had not provided any services.

(5) The Applicant had facilitated more than one burglary at her flat, as a result of which she has suffered serious personal injuries.

(6) Because of her injuries the Respondent had been unable to pay the ground rent in time. She therefore disputed the administration charges raised because of the late payment.

(7) Although the Respondent did not formally plead a set off, she counterclaimed for damages for eight different matters, including breach of covenant for quiet enjoyment, derogation of grant, harassment and molestation, pain and suffering, distress, loss of amenity, lost years and loss of earning capacity.

4. The proceedings were transferred to the County Court at Romford. On 2 July 2019, Deputy District Judge Oldham transferred to the Tribunal pursuant to paragraph 3 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 the determination of the liability to pay and reasonableness of the service charges and all other matters within its jurisdiction.

5. It is to be noted that the judge did not transfer the whole of the proceedings to the Tribunal. No directions have been given that the Tribunal Judge should also sit as a Deputy District Judge under the deployment scheme to deal with the other issues, such as the claim for personal injury.

6. At the start of the proceedings the parties were told that the Tribunal would only make determinations in respect of the matters set out in paragraph 1 above. If the Respondent is successful in the County Court in due course in respect of any part of her Counterclaim, then those damages can be set off against the amount of service charges and administration charges found to be owing by the Tribunal. It is been noted that in the County Court proceedings the Applicant has applied to strike out the Respondent's Defence and Counterclaim. No such application was before us, and the Tribunal has not struck out any of those parts which are germane to its decision.

## **The background**

7. The property which is the subject of this application is an upstairs flat in a block of five purpose built flats situated above commercial premises ("the flat").

8. The Applicant says that the Respondent is the assignee of a long lease of the flat dated 24 July 2003 ("the lease"). The lease is at [3/6-39].

9. The Respondent is the registered proprietor of a long lease of the flat under title number EGL 460132 [2/4-5]. The short particulars given in the property register match the relevant particulars of the lease in the bundle. The Applicant's evidence is that this document was obtained from Land Registry.

10. The Respondent was asked to produce what she said was the true lease. She handed to Ms Kleopa a document she relied upon, but this turned out to be in identical terms to the lease in the bundle. She said that there were other leases which referred to the commercial premises and had a number of similarly numbered clauses. But she was unable to produce these documents.

11. The Tribunal is entirely satisfied that the serious allegation of forgery is not supported by any evidence.

12. The Applicant is the registered proprietor of the building in which the flat is situated under title number EGL135456 [1/1-3]. The Respondent suggested that GR Management Property Ltd was not the landlord because the address given on the Claim Form for the Applicant was not the address shown in the property register.

13. There is nothing in this point. GR Management Property Ltd has a conclusive title: section 58 of the Land Registration Act 2002.

**The lease**

14. The service charge provisions in the lease are to be found in clause 4 [3/17-21]. The service charge year runs from 24 June in each year. The services which are the subject of the service charge include the provision of insurance, and the maintenance and repair of the main structure, electric installations and the common parts of the building.

15. Clause 4(4)(a) provides as follows:

*The Tenant will on such dates as the Landlord or his Managing Agent may from time to time during the Term specified pay in advance to the Landlord such reasonable sum as the Landlord or his Managing Agents shall consider appropriate on account of his contribution to the Annual Maintenance Cost.*

16. In other words, the Applicant is entitled to ask for a payment in advance at any time. It is not restricted to asking for such a payment at any specific dates in the year.

17. The Respondent made a sweeping assertion that none of the service

charges were recoverable because the Applicant had not complied with the consultation requirements set out in the Landlord and Tenant Act 1985. The Tribunal was unable to find any fault with the way in which the managing agents had, in respect of the works referred to below, conducted the tendering process or carried out the necessary consultation process.

**Advance service charge due on 1 October 2017: £1,224.33**

18. The Respondent bought the flat on 29 January 2016 and was registered as the proprietor on 12 February 2016. On 1 October 2017 new managing agents were appointed. They are B Bailey & Co Ltd ("the managing agents").

19. On 1 October 2017, the managing agents sent a demand to the Respondent for advance service charges for the period 1 October 2017 to 23 June 2018 in the sum of £1,224.33 [18/228]. This figure was based on the 2017/2018 budget of £8,400.00 [19/248]. Each flat pays one fifth. This sum of £1,680.00 was apportioned from 1 October 2017 to arrive at the figure of £1,224.33.

20. In her oral evidence the Respondent accepted that this was a reasonable estimate.

21. As part of her case, the Respondent asserted that the services charged for in the advance payment were never carried out, and that the demand was simply an attempt to obtain money when there was no intention to carry out the work.

22. In fact, as the Applicant explains in its skeleton argument, the actual expenditure for the year ending 23 June 2018 was £5,932.92 [20/249.5], a sum very close to that demanded in advance.

23. The Tribunal has no hesitation in finding that the demand for £1,224.33 was made in good faith, and that the amount demanded both reflected what was actually spent subsequently and was reasonable.

**Advance service charge due on 1 October 2018: £1,680.00**

24. On 24 June 2018, the managing agents sent a demand to the Respondent for advance service charges for the period 24 June 2018 to 23 June 2019 in the sum of £1,680 [18/244]. This figure was based, of course, on the same budget as the year before.

25 In her oral evidence the Respondent accepted that this was a reasonable estimate.

26. Again, as part of her case, the Respondent asserted that the services charged for in the advance payment were never carried out, and that the

demand was simply an attempt to obtain money when there was no intention to carry out the work.

27. In fact, as the Applicant explains in its skeleton argument the actual expenditure for the year ending 23 June 2018 certified by the accountants was £22,371.88 [20/254], a higher sum than year before because of the repairs carried out and increased legal and professional fees.

28. The Tribunal has no hesitation in finding that the demand for £1,680.00 was made in good faith, and that the amount demanded both reflected a part of what was actually spent subsequently and was reasonable.

**Advance service charge due on 23 July 2018: £8,916.34**

29. On 23 July 2018, the managing agents sent a demand to the Respondent for advance service charges described as *Apportionment of Costs for Works* in the sum of £8,916.34 [21/300].

30. There is no doubt that the building is in a poor state of repair . It was decided to carry out major works to the communal parts of the building. The consultation documents and specifications are at [21/258 and following]. We are satisfied that the tendering was properly carried out, the consultation requirements were complied with and that the amounts proposed to be charged are reasonable

31 . The schedule of costs for the roof works and internal works together with intercom and CCTV amounts to £50,311.68 [8/78]. It was only proposed to carry out some of this work, and the Respondent's share of this work is £8,916.34. The part of this work relating to safety has already been carried out. The remainder of the work has not yet been carried out, no doubt because not all of the lessees, including the Respondent, have paid their contribution to it.

32. Again, in her evidence the Respondent accepted that the figures as such were reasonable.

33. Again, we have no hesitation in finding that the demand for £8,916.34 was made in good faith and was reasonable.

**Administration Charges**

34. We have some sympathy with the Respondent in respect of the administration charges. The Respondent failed to pay her ground rent of £100 on 25 December 2017. At this time she was seriously injured as a result of a burglary. She could not physically pay the ground rent until sometime in March 2019. By that time administration charges of £343.00 had been levied.

35. The obligation to pay the ground rent is a strict one. It is no defence that

the Respondent was physically unable to make the payment. It would, of course, have been be a relevant factor if the sums were higher and the question of relief from forfeiture arose.

36. As it happens, we were told that the Applicant very properly was prepared to waive these administration charges if only the Respondent would continue to keep up to date with the ground rent. She has refused to do this and the waiver therefore has not arisen.

37. We are satisfied that the component parts of the administration charges are reasonable in amount and that they are properly payable.

38. These proceedings are now to be transferred back to the County Court for a determination of the remaining issues between the parties.

## Application under section 20C

39. We are persuaded that the final clause in paragraph 4(b)(v) of the lease [3/19] allows the Applicant to pass the costs through the service charge.

40. We allowed the Respondent to make an oral application under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2002 Act.

41. In the light of our findings it must follow that it would not be just and equitable in the circumstances for an order to be made under section 20C.

**Name:** Simon Brilliant **Date:** 19 November 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).