



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

Case Reference : **CHI45UE/LSC/2018/0088**

Property : **112 Railey Road, Northgate,
Crawley, RH10 8DB**

Applicant : **Mr Russell Gore**

Representative : **N/A**

Respondent : **Crawley Borough Council**

Representative : **N/A**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges**

Tribunal Members : **Tribunal Judge I Mohabir
Mr B H R Simms FRICS**

Date of Decision : **1 April 2019**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of the reasonableness of estimated service charges in the sum of £4,654.19 demanded by the Respondent for the year ended 31 March 2019.
2. The Applicant is the leaseholder of 112 Railey Road, Northgate, Crawley, RH10 8DB (“the property”) by a lease granted to him by the Respondent dated 20 December 2004 for a term of 125 years from 21 September 1982 (“the lease”). The property is described as a ground floor flat/studio, which comprises a total of 4 flats in the block.
3. The relevant service charge provisions can be found at clauses 1, 3 and 7 in the lease. The heads of service charge expenditure for which the Applicant is required to pay a service charge contribution are set out in Schedule 8 of the lease.
4. The service charge year operated by the Respondent is from 1 April in each year to 31 March in the following year. Under the lease, the annual estimated service charge is payable by equal instalments on 1 April and 1 October in each year. The Applicant’s annual estimated service charges for the year ended 31 March 2019 is £4,654.19, payable by two instalments of £2,327.09 as set out above.
5. The estimated service charge demand is comprised of a number of heads of expenditure. It is clear that the Schedule of Management Charges prepared by the Respondent has been done using a generic template. Although, for example, it refers to lift maintenance, the Tribunal was satisfied that no such charges have been claimed against the Applicant because the building does not have a lift.
6. The Applicant does not dispute his contractual liability to pay the estimated service charges demanded or that the expenditure in respect of

which it is claimed is not necessary. Although the Applicant appears to challenge the entire estimated service charge, it is clear from his statement of case that he limits his challenge to the estimated cost of £3,960.10 for the external maintenance and decorations to the exterior and internal common parts of the block. These works have now been completed and the actual amount that will be charged will be finalised when a balancing charge is applied in October 2019.

7. The general challenges made by the Applicant in his application and statement of case are:
 - (a) the (unspecified) works and painting have not been carried out to a reasonable standard.
 - (b) the decoration to the common parts has been damaged by the refuse collectors.
 - (c) the Respondent has not provided receipted invoices from the contractors, the method statements or details of the materials used.
 - (d) No further quotes were obtained.
 - (e) the administration fee of £155.71 is ridiculous.
 - (f) the surveyors' fees are not reasonable because they already work for the Respondent.

These are dealt with in turn below.

Relevant Law

8. This is set out in the Appendix annexed hereto.

Decision

9. The Tribunal's determination took place on 1 April 2019, following an inspection of the external and internal common parts of the building. Its determination is based solely on the statements and documents filed by the parties. There was no oral hearing, as none was requested by either party.
10. It should be noted from the outset that the only issue the Tribunal had to consider is whether, at the time the first demand was served on the Applicant on 1 April 2018, the estimated cost for the external maintenance and decorations to the exterior and internal common parts of the block was reasonable.
11. The Tribunal was not concerned about the standard of the completed works because at the time the demand had been served on the Applicant, they had not yet commenced. If and when the final costs have been calculated by the Respondent, it is open to the Applicant, if he so wishes, to bring a fresh application to challenge the costs in relation to the completed works. It will be necessary for the Applicant to prove that the minor cosmetic damage the Tribunal noted to the internal common parts existed at the time the works were completed and did not occur subsequently. The Applicant appears to have conflated these two matters.

Works & Painting not to a reasonable standard

12. For the reasons set out above, it was not open to the Tribunal to make any finding in relation to the standard of the completed works and/or painting. The issue was whether the estimated cost of these works was reasonable. The burden of proof is on the Applicant to prove, on a balance of probabilities, that it was not. However, save for a bare assertion in those terms, he provided no evidence at all to support it.
13. In contrast, the Respondent had provided a detailed witness statement from Mr Tarran who is an Asset Surveyor employed by it with

responsibility for the supervision and administration of leasehold property maintenance, including the subject property.

14. Mr Tarran confirmed that the works were governed by a qualifying long-term agreement and was not legally required to send separate estimates to the Applicant. Apparently, a priced proposed scope of works was sent to him. The estimated cost had been calculated by reference to a Priced Schedule of Rates under the qualifying long-term agreement, which is based on the national Building Specification.
15. The Tribunal accepted the evidence of Mr Tarran without qualification and found the estimated cost of £3,960.10 for the external maintenance and decorations to the exterior and internal common parts of the block to be reasonable.

Damage to Decoration of Internal Common Parts

16. Again, for the reasons set out above, this issue does not fall within the scope of this application. In any event, if the Applicant's assertion is correct, it is not relevant to determining whether the estimated cost of decorating the internal common parts is reasonable or not.

No Receipts/Quotes Provided

17. The Tribunal was satisfied that there is no legal requirement for the Respondent to provide this disclosure because the works was carried out under a qualifying long-term agreement and the cost was estimated in the way described by Mr Tarran at paragraph 14 above.

Administration Fee

18. The Respondent also provided a witness statement from Gail Weeks who is a Housing Facilities Manager employed by it with responsibility for the management of leasehold properties including the subject property.
19. The administration fee claimed by the Respondent is £155.71. At paragraphs 18-29.6 of her witness statement, Ms Weeks set out in details

the administrative services provided by the Respondent to leaseholders. Having regard to that evidence, the Tribunal found the administration fee to be eminently reasonable. For the avoidance of doubt, the Tribunal's finding is based on whether the administration costs are claimed a part of the Applicant's overall service charges or separately as an administration charge under Schedule 11, paragraph 1 of the Commonhold and Leasehold Reform Act 2002 below.

Surveyor's Fees

20. The issue regarding the estimated cost of the surveyors' fees is dealt with at paragraphs 32-36 in the statement of Ms Weeks. They are comprised of two elements of cost. The first is £5.44, being 7.25% of the annual estimated cost of routine maintenance to the building. The second is £257.40, being 6.5% of the estimated cost of the major works in the sum of £3,960 for supervision of the works.
21. The Tribunal was satisfied that the surveyors' fees are recoverable under paragraph 2 of the Eighth Schedule in the lease. In addition, the Tribunal found the estimated costs to be reasonable. Although the Tribunal was perhaps surprised about the degree of supervision that was considered necessary for works carried out under the qualifying long-term agreement, nevertheless, there was no evidence from the Applicant to prove that the cost was unreasonable.

Costs

22. Given that the Applicant has not succeeded on any of the issues in the application, the Tribunal did not consider it just of equitable to make an order under section 20C of the Act or under paragraph 5A of the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recovering any costs it had incurred in these proceedings.

Fees

23. For the same reasons, the Tribunal also made no order requiring the Respondent to reimburse the Applicant any fees he had paid to have the application issued and heard.

Tribunal Judge I Mohabir

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) ...