FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LSC/2019/0312**
Property	**:**	**Flat 186a London Road, Croydon, Surrey CR0 2TE**
Applicants	**:**	**Gordon Joseph Mullen & Dhaniben Sheila Mullen**
Representative	**:**	**Tilbury Goddard Solicitors**
Respondent	**:**	**Qasir Chaudhury**
Representative	**:**	**Blocsphere Property Management**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**P M J Casey MRICS** **Ms S Coughlin MCIEH**
Date and venue of Hearing	**:**	**6 December 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15 January 2020**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £ Nil is payable by the applicants in respect of the service charges demanded in advance for the years 2018-19 and 2019-20.

(2) The tribunal makes the determinations as set out under the various headings in this Decision

The application

1. The applicants seek 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 applicants in respect of the service charge years 2018-19 and 2019-20.

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

3. On 17 September 2019 a case management hearing was held which the applicant attended with his solicitor. The respondent confirmed prior to the hearing that he would not be attending through his agents who asked for a copy of the directions which were issued on the same day. Among other matters these asked the landlord to disclose a copy of the managing agent's agreement, copies of contracts/invoices for any consultants and the planned project manager, details of any life cycle costings identified and underlying the proposed sinking fund contributions and details of any fire safety inspections, risk assessments and electrical testing carried out and claimed through the service charge. None of these documents have been provided and neither the respondent nor his agents have complied with any of the directions. The tribunal wrote to the landlord on 5 November 2019 asking for an explanation and warning that continued failure to comply could result in him being barred from taking any further part in the proceedings. No reply was received.

The hearing

4. The applicants were represented by Chris McCarthy of Counsel at the hearing; the respondent neither appeared at nor was represented at the hearing.

The background

5. The property which is the subject of this application is a self-contained first floor flat conversion in a three storey early 20th century building with commercial premises on the ground floor.

6. Photographs and plans of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The applicants hold a long lease of the property dated 20 February 2008 which requires the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. The applicant explained that when he bought his interest in the property in 2008 it was managed by the then freeholder and the estimated service charge for 2008/9 was £200. Sometime thereafter the respondent purchased the freehold and sought services charges and ground rent from the applicant who involved his solicitors who wrote to the new landlord on 23 December 2015 and among other matters raised the question of there now being an extra two flats at the building, a circumstance which the lease provided for by a provision for the recalculation of the applicants' service charge %. A further letter was sent on 10 February 2016 but neither elicited a response. From the limited documents and his own memory of events it appears that in early 2018 Blocsphere were appointed by the landlord to manage the property but it does not appear that they made any service charge demand until 11 January 2019 when they asked for an advance contribution of £2,012.40 for the year 6 April 2018 to 5 April 2019 which was challenged by the applicants' solicitors who still required answers to their earlier questions as well as a copy of the budget. Mr Mullen was unsure when asked by Counsel if the demands were accompanied by a summary of tenant's rights and obligations as required by s21B of the Landlord and Tenant Act 1985 and we take this point no further. A payment reminder was sent on 5 March said to give rise to a liability to pay an administration charge of £75. Further correspondence ensued and two further reminders with again a £75 charge each. The respondent instructed Brethertons, solicitors, to pursue recovery in June 2019 but they are no longer acting. On 8 April 2019 a demand was made for an advance service charge payment for 2019-20 this time for £1,833.66. A copy of the budget was enclosed, that for 2018-19 having been provided earlier but the applicants and their solicitors remained discontented with the replies they received to their requests for information particularly as, from what they could see,

no services were being provided. The application to the tribunal was accordingly made challenging the reasonableness and payability of all the heads of expenditure shown in the two budgets.

9. Having heard evidence and submissions from and on behalf of the applicants and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

10. The lease provides that the service charge year is the period from 6 April to 5 April in the following year. It also provides that the applicants pay 18% of the amounts annually expended on services subject to the provision contained in paragraph 7 of the second schedule for variation if the total property enjoying the benefit of the services is increased or decreased. 18% is also the specified proportion payable to the freeholder in respect of his obligation to insure. Paragraph 4 of the Second Schedule provides that the tenant shall pay for each service charge year a provisional sum calculated upon a reasonable and proper estimate of what the annual expenditure is likely to be for that year by one instalment on 6 April in each year. Any shortfall between actual expenditure and the provisional sum is due to the landlord on demand (paragraph 5) once he has complied with his obligation in paragraph 2 to prepare an account showing the annual expenditure as soon as is convenient after the year end. Any surplus is to be credited to the tenants' account. It is the applicants' evidence that nothing has been done at the property in respect of providing services up to the present time since the respondent because the owner. Mr Mullen has had to have the front door repaired three times at his own expense, there is no cleaning, and there are only three bulbs in the communal spaces and no electricity bill have been provided. Blocsphere in an e-mail reply to the applicants' solicitors letter of 20 March 2019 admit that they had not carried out "certain inspections" prior to preparing the budget for 2018-19 and complain that they could not start services as non-payment of service charges meant they had no funds and were not themselves being paid by the freeholder.

11. It does not appear to the tribunal that a reasonable and proper estimate as required by paragraph 4 of the Second Schedule has been made. The respondent failed to comply with the directions which required that this be addressed. Nor was either estimate prepared in sufficient time for the applicant tenants to pay their due proportion of it by one instalment on 6 April in each year; the first demand was made on 11 January 2019 for the 2018-19 service charge year, the second on 8 April 2019 for the 2019-20 year. In our view the demands are invalid. Any expenditure incurred by the respondent in the years in question can be recovered by them after preparing the account after the year end as provided for in paragraph 2 of the Second Schedule. As to the reasonableness of any of

the amounts demanded as provisional sums we are unable to express any view given the respondent's failure to comply with the directions or to take any other part in the proceedings. In the light of Mr Mullen's unchallenged evidence of a complete absence of service chargeable activity at the property it is unlikely they are. Mr Mullen accepts however his obligation to contribute his share of the insurance premium as and when demanded and on being satisfied the appropriate cover is in place.

12. Mr McCarthy also asked us to deal with the administration charges demanded by Blocsphere for the late payment/reminder letters which were not included in the application. We are happy to do so and given we have decided the demands underlying those charges were invalid they are not recoverable.

Application under s.20C and refund of fees

13. On the application form, the applicants made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions and taking into account the determinations above, the tribunal orders the respondent to refund any fees paid by the applicants within 28 days of the date of this decision.

14. In the application form the applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions and taking into account the determinations above, the tribunal determines, for the avoidance of doubt, 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 even though it is hard to see how any such could have arisen.

15. This application does not engage the tribunal's jurisdiction in regard to any possible variation of the lease. This is a matter for resolution between the parties in accordance with the provisions of the lease or, failing that, a possible further application to the tribunal on the appropriate form.

Name: P M J Casey **Date:** 15 January 2020

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

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).