



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

Case reference : **LON/00AX/LSC/2019/0393**

Property : **Flat 105 Lakeside, 82 Eaton Drive,
Kingston upon Thames, KT2 7RA**

Applicant : **Lakeside Estates Ltd**

Representative : **Mr Gibson
Howell Jones, Solicitors**

Respondent : **Mr Sanjay Suryakant Popat**

Representative : **In Person**

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

Tribunal members : **Mr A Harris LLM FRICS FCI Arb
Mr C Gowman BSc MCIEH**

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

Date of decision : **27 January 2020**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Kingston Upon Thames County Court.

The application

1. The Applicant seeks 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 Respondent in respect of the service charge years 2014 to 2019.
2. Proceedings were originally issued in the County Court Business Centre under claim no. E2CH13PZ. The claim was transferred to the Kingston upon Thames County Court and then in turn transferred to this tribunal, by order of District Judge Hartley on 9 October 2019.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Gibson of Howell Jones, Solicitors at the hearing and the Respondent appeared in person.
5. The tribunal issued Directions setting the case down for a hearing on 27 January 2020. On 19 January, the Respondent requested an adjournment of the hearing and this was refused in writing on 21 January. The Respondent renewed the application orally at the start of the hearing. This was opposed by the Applicant on the grounds that the application contained no new arguments not already considered by the tribunal. The tribunal considered the request and declined to grant an adjournment.
6. On 17 January, The Applicants solicitors lodged a witness statement with the tribunal. No copies were added to the bundle. The Respondent denied having seen the statement. As the witness was not present the tribunal did not admit the statement.

7. The Applicant had prepared a bundle of documents in support of its case but no documents were received from the Respondent. The tribunal proceeded with the papers it had.

The background

8. The property which is the subject of this application is a 10 storey block of flats, standing in substantial grounds which are shared with some houses and a separate block of garages. The service charges are split into three parts, for the flats, the grounds and the garages. Some of the flats have external balconies, the block has a lift and caretaker paid for in te service charge. The Respondent does not live at the flat.
9. 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.
10. The Respondent 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 will be referred to below, where appropriate.

The issues

11. The case concerns arrears of service charges and administration charges said to be payable amounting to £21,875.22 plus Court fee and costs. A defence was submitted by the respondent in the County Court Proceedings on 23 December 2018 in which £10,713.55 was admitted as payable although this is not broken down.
12. The tribunal heard from the Applicant setting out the basis of the claim and from the Respondent on the pleaded items in the County Court defence only. The issues for determination are as follows:
 - (i) A reconciliation difference between the claim amount and a statement 1 November 2018 of £580.38
 - (ii) Interest said to be double counted in the sum of £1955.00
 - (iii) Administration charges amounting to £2520.00 are said not to be chargeable under the Company Memorandum and Articles of Association.
 - (iv) There is alleged to be an unexplained special levy on the service charge of £3857.99

(v) There is an unauthorised increased service charges credit of £2248.55.

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

Service charges claimed £16,740.67

14. The Applicant went through the build up of service charges claimed for the years from 2014 to 2019 as set out below. Reference was made to the various accounts provided for each year. The special levy is shown in the year for 2018 and will be commented on later in the decision.

year	amount								
Flats	flats			Estate			Garages		
	S/C								
01/07/2014	£ 470.49			£ 13.60			£ 62.67		
01/10/2014	<u>£ 470.49</u>			<u>£ 65.45</u>			£ 62.67		
		£ 940.98			£ 79.05			£ 125.34	
01/01/2015	£ 470.49			£ 65.45			£ 62.67		
01/04/2015	£ 614.46			£ 65.45			£ 62.67		
01/07/2015	£ 614.46			£ 65.45			£ 62.67		
01/10/2015	<u>£ 614.46</u>			<u>£ 65.45</u>			£ 62.67		
		£ 2,313.87			£ 261.80			£ 250.68	
01/01/2016	£ 614.46			£ 65.45			£ 62.67		
01/04/2016	£ 614.46			£ 65.45			£ 62.67		
01/07/2016	£ 614.46			£ 65.45			£ 62.67		
01/10/2016	<u>£ 614.46</u>			<u>£ 65.45</u>			£ 62.67		
		£ 2,457.84			<u>£ 261.80</u>			<u>£ 250.68</u>	
01/01/2017	£ 614.46			£ 65.45			£ 62.67		
01/04/2017	£ 614.46			£ 65.45			£ 62.67		
01/07/2017	£ 614.46			£ 65.45			£ 62.67		
01/10/2017	<u>£ 614.46</u>			<u>£ 65.45</u>			£ 62.67		
		£ 2,457.84			£ 261.80			£ 250.68	
01/01/2018	£ 614.46			£ 65.45			£ 62.67		
01/04/2018	£ 614.46			£ 65.45			£ 62.67		
01/07/2018	£ 614.46			£ 65.45			£ 62.67		
01/10/2018	£ 3,857.99								
01/10/2018	<u>£ 614.46</u>			<u>£ 65.45</u>			£ 62.67		
		<u>£ 6,315.83</u>			<u>£ 261.80</u>			<u>£ 250.68</u>	
		£14,486.36			£1,126.25			£1,128.06	£16,740.67

15. No dispute as to the amounts set out above is raised in the defence apart from the special levy and no challenge is made to the reasonableness or payability of any year's service charge.

16. The Respondent made no challenge to the individual amounts shown in the schedules for each year but did make a challenge to the amount held

in the reserve fund for the garages and also to the overall level of charges and the way the reserve fund is operated. Each of these will be dealt with later.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of service charges is £16,740.67.

Reasons for the tribunal's decision

18. The applicant presented the service charge accounts and audited company accounts for each year. No challenge was made to any individual item of expenditure and no evidence was submitted to show any item is unreasonable or not payable.

Garage reserve fund

19. The Respondent argued that a garage reserve fund of just over £100,000 was unreasonable and should be returned to the leaseholders. He also stated that there had been a history of settlement damage to the block and also for roof repairs. At one point, demolition and rebuilding of the block was being considered. No major works have been made to the garages showing the amount of the reserve fund to be unnecessary.

The tribunal's decision and reasons

20. The tribunal does not accept the arguments of the Respondent. The level of reserve funds is a matter for the Company to decide and the fact that over a relatively short period of time the fund has not been expended does not mean it is unreasonable. The accounts show funds have been utilised and service charges evened out over the period in question. Other works to the main block of flats have taken priority.

Special Levy October 2018

21. The Applicant explained that a programme of major works was being put in place originally planned for 2018 although later deferred to 2019. Much of the cost of the works was already in hand in the reserve fund but a special levy was required for the balance.
22. The Respondent stated that the special levy was put in the defence in December 2018 as at that stage he did not know what levy was for. He since accepts that the levy was to cover major works including work to the roof lifts balconies external painting and scaffolding.

The tribunal's decision and reasons

23. The tribunal accepts that the special levy was appropriate in the circumstances in order to fund a programme of major works. It is clear that the Respondent knows of the works and no challenge has been made in response to the application to either the level of expenditure or quality of work. The tribunal did not allow any challenge to be made at the hearing in the absence of any evidence being submitted.

Unauthorised increased service charges

24. The Respondent stated that in 2015 at the company AGM resolution was passed to restrict service charges to the level payable prior to that year. The argument was that in 2015 the service charge was increased to fund works to the roof and that thereafter it should revert to its previous level. The respondent stated that this was documented at the AGM and a resolution passed instructing the directors to that effect. No evidence of this resolution was before the tribunal.
25. The Applicant took the tribunal to the service charge accounts for the years in question which confirmed that major works had been done in 2015 which significantly depleted the reserve fund. The reserve fund has been rebuilt in subsequent years. The table above shows that the level of service charge has remained consistent for the last three years and the accounts show that levels of expenditure have remained consistent.

The tribunal's decision and reasons

26. In the absence of any evidence of a resolution restricting the amount of service charge which could be levied in any one year, the tribunal is unable to accept the Respondent's argument. The accounts show that the service charge has been held at a consistent level and a prudent reserve fund maintained.
27. As the Applicant pointed out the argument does not affect the amount of service charge which is due which is based on expenditure and if the Respondents argument was accepted it would simply result in further special levies being needed rather than service charges evened out as currently happens.

28. Administration Charges totalling £2520

29. Administration Charges are claimed based on seven charges of £360. This is made up of three charges on the flat service charge and to each on the estate and garage service charges. The Applicant stated these are a flat charge. The lease allows costs of contemplated section 146 proceedings to be charged to leaseholders. The Applicant confirmed that no section 146 notice has so far been served.

30. In his defence the respondent has made no challenge to the amount of each charge and the tribunal did not allow this to be made at the hearing as it had not been raised previously. The ability of the management company to raise administration charges for arrears is disputed under the memorandum and articles of association of the company. No evidence was produced in support of this argument. The respondent stated he had not had time to prepare the documents even though the argument was first raised over a year ago.

The tribunal's decision and reasons

31. Administration charges fall under schedule 11 of the Commonhold and Leasehold Reform Act 2002 and under s1(1)(c) administration charges in respect of a failure by the tenant to make a payment on the due date may be levied to the extent that they are reasonable. The only ground of challenge made by the Respondent is that administration charges are not permitted under the memorandum and articles of association of the company but no evidence has been provided to support this argument. The tribunal therefore finds that the administration charges are reasonable and payable.

Interest charges

32. It was agreed by the parties that interest charges would need to be recalculated in the light of final determinations by the court.

Application under s.20C and refund of fees

33. No application was made under s20C.
34. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Kingston Upon Thames County Court.

Name: A Harris

Date: 27 January 2020

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).