



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

Case Reference : **LON/00AM/LSC/2019/0430**

Property : **Flat 6, 2 Boleyn Road, London N16
8EP**

Applicant : **Mr. Dan Blessing**

Representative : **In person**

Respondent : **Network Homes Limited**

Representative : **Ms R Clarke, Senior Leasehold
Manager**

Type of Application : **Service charges**

Tribunal Members : **Judge Tagliavini
Miss M Krisko FRICS**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
19 February 2020**

Date of Decision : **20 February 2020**

DECISION

THE TRIBUNAL'S SUMMARY DECISION

- I. The tribunal finds that the Applicant is not liable to pay the sum of £1,599.40 claimed by the Respondent as the balancing payment for the actual service charge year costs of 2017/2018.**
-

The application

1. This is an application made under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) seeking the tribunal’s determination as to his liability to pay the sum of £1,599.40 which is said to be a balancing payment in respect of the service charge year 2017/2018.

The leases

2. By a shared ownership lease dated 20 December 2016 made between the respondent landlord and the applicant tenant, Mr. Blessing was granted a 40% share of the subject premises with effect from 8 December 2016 for a term of 125 years less 5 days (“the shared ownership lease”)
3. The shared ownership lease stated in the following clauses relevant to this application:

3.3.1 To pay Outgoings

3.3.2 To refund to the Landlord on demand (where Outgoings relate to the whole or part of the Building or other property including the Premises) a fair and proper proportion of the Outgoings attributable to the premises, such proportion to be conclusively determined by the Landlord (who shall act reasonably).

7.1 The Leaseholder covenants with the Landlord to pay the Service Charge during the Term by equal monthly payments in advance on the first day of each month or as otherwise specified by the Landlord, the first payment to be made on the date of this Lease.

7.2 The Service Provision in respect of any Account Year shall be calculated before the beginning of the Account year and shall be calculated in accordance with clause 7.3.

7.3 The Service Provision shall consist of a sum comprising the expenditure estimated by the Authorised Person as likely to

incurred in the Account Year by the Landlord for the matters specified in Clause 7.4 (Service Provision).

7.4 The relevant expenditure to be included in the Service Provision shall include all expenditure reasonably incurred by the Landlord in connection with the repair, management, maintenance and provision of services for the Premises.....

(d) any Outgoings assessed, charge, imposed or payable on or in respect of the whole or any part of the Premised; and

(e) any administrative charge incurred by or on behalf of the Landlord.....

7.5 As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in Clause 7.3 (*How calculated*) shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy of the certificate and the Leaseholder shall be allowed or (as the case may be) shall pay immediately following receipt of the certificate the excess or the deficiency.

Schedule 9 – Defined Terms

“Account Year” means a year ending on 31 March

“Authorised Person” means the individual nominated by the Landlord to estimate expenditure in relation to the Service Provision in accordance with Clause 7.3 (*How calculated*)

“Management Company” means Remus Management Limited.....

“Service Provision” means the sum calculated in accordance with clause 7.3 (*How calculated*), Clause 7.4 (*Service Provision*) and Clause 7.5 (*Adjustment to actual expenditure*)

4. In a lease dated 8 December 2016 made between (1) Taylor Wimpey UK Limited “the Company” (2) Remus Management Limited (“the Management Company”) and (3) Network Homes Limited (“the Tenant”) the respondent was granted a head lease of the subject premises for a term commencing on 8 December 2016 and expiring on 25th September 2141 (“the Head lease).

5. In the Head Lease The Sixth Schedule Part 1 (Covenants by the Management Company and the Tenant in respect of Maintenance Charge) specified:

1. Estimate

The Management Company shall as soon as practicable after the 1st day of January in each year prepare estimate of the sums to be spent by it on matters specified in Part II of this Schedule (“Estimated Management Costs”) for such year and shall forthwith notify the Tenant of such Estimated Management Costs.

3. Account and Adjustment

The Management company shall in respect of each calendar year keep accounts of the sums spent on the matters specified in Part II of this Schedule or in the case of Heat the usage of the tenants within the block according to usage measured by the meters in place in each Flat (“Actual Management Costs”) in relation to the obligations contained in the Fifth Schedule and shall as soon as reasonably practicable after the end of each calendar year (or in the case of heat and hot water every [month/three months] notify the Buyer of the Actual Management Costs incurred during such year and the amount of the Estimated Management Costs for the current year notified to the Buyer in accordance with paragraph 1 hereof shall be amended (whether by addition or subtraction) to take into account any excess or deficiency in the Actual Management Costs incurred in the preceding year.

Part II Initial Maintenance Charge 4.06%

The background facts

6. As there was little dispute between the parties as to the facts the issue for the tribunal was one that was limited to the interpretation of the Shared Ownership Lease as to Mr. Blessing’s contractual liability to pay the sum in dispute.

The applicant’s case

7. The tribunal was provided with a separate bundle of documents from each party. In a statement, Mr. Blessing told the tribunal he had been sent a letter dated 13 December 2018 demanding payment of £1,599.40 in respect of actual service charges for the period 2017/18. Mr. Blessing stated that this sum was made up of the charges contained in the four invoices of which only 2 were relevant and sent to the respondent by Remus Management Company “Remus”). This letter stated”

“The final account has now been revised, certified by our service charge accountant and independently reviewed by our external auditors BDO..... The managing agent’s costs are based on an estimate calculated by Remus and invoiced to Network Homes. The actuals for the property are higher than

the estimate as the managing agent invoiced us for two financial years 2016/17 and 2017/18 during our financial year 2017/18.

Whilst the amount is in line with the annual budget and figures confirmed to you on completion Remus has not yet finalised their actual accounts for this financial period. When we receive their accounts any deficit or credit adjustment will be included in Networks year end reconciliation.....

The attached final account shows you the difference between the estimated service charged to your account and the actual service charges for your property for the period from when the property was first sold in 2016-17 to 31 March 2018. The final account adjustment is £1,599.40.

8. Accompanying this letter of 13 December 2018 was a Statement of Service Charge 21 December 2016 to March 2018, which recorded the estimated service charges for 2017/18 of £1,581.00 and the Actual service charges for 2017/18 of £3,180.40. A Network Management Fee of £45.00 was added to these sums thereby producing the “shortfall” of £1,599.40. A further letter from Network Homes made it clear that these interim estimated charges concerned the estimated service charges for the calendar period 01/01/2017 to 31/12/2017 and the estimated charges of £1,547.79 for the calendar periods of 01/01/2018 to 31/12/2018 as specified in the Head Lease. The respondent attached the accompanying invoices Nos. 769207 and 807049 that had been sent from Remus to Network Homes in respect of the same periods and sums.
9. Mr. Blessing told the tribunal that in accordance with the terms of the Shared Ownership Lease, he had been paying his estimated service charges on a monthly basis for the service charge years 1/4/17 to 31/3/18 and 1/4/18 to 31/3/19 in the sum of £135.50 per month totalling £3,252. Mr. Blessing stated that he did not accept he owed any additional sums simply because the respondent had been invoiced 2 years’ worth of service charge during 2018 covering the 24 months period 1/1/17 to 31/12/18

The respondent’s case

10. In the Reply to the Statement of Case it was asserted by the respondent that for the financial year April 2016 to March 2017 no service charges had been due as Remus had not invoiced Network Homes in respect of this period.

11. For the period April 2017 to March 2018 Mr. Blessing's account was charged the estimated cost for the 12 months period in the amount of £135.50 per month.
12. The tribunal were informed that Network Homes had been invoiced on 18/07/2017 by Remus in Invoice 769204 the sum of £1580.97 for interim service charges for the period 01/01/2017 to 31/12/2017 and on 18/07/2017 by Remus in Invoice 807049 the sum of £1547.79 for interim services for the period 01/01/2018 to 31/12/2018. Accordingly, Mr. Blessing's service charge accounts showed an adjustment (debit) on 17/12/2018 of £1,599.40 to reflect the actual service charge deficit.
13. Ms Clarke told the tribunal that as Network had incurred these charges by paying service charges covering a 2 year period by way of a lump sum before the expiry of the period which they covered, these costs had been incurred by the respondent and therefore were chargeable to Mr. Blessing.

The tribunal's decision and reasons

14. The tribunal finds that Mr. Blessing's service charge year (Account Period) runs from 1st April to 31st March of each year as stated in the lease.
15. The tribunal finds that Remus Management Company is the Authorised Person in respect of the provision of services under the terms of the Shared Ownership Lease for the subject premises.
16. The tribunal also finds that Mr. Blessing has not been provided with estimated service charges for the correct Account Period by Remus or by the respondent. The tribunal finds that the respondent has accepted the calendar year estimates provided to it by Remus without making any recalculation in respect of the differing Account Year provided for by Mr. Blessing's lease.
17. The tribunal finds that Mr. Blessing should receive before and no later than the start of each service charge year on 1st April an estimated service charge account for the period 1/4 to 31/3 and for which he is required to pay by equal monthly instalments. The tribunal finds that Mr. Blessing has satisfied his requirement to pay the estimated charges for the service charge years 1/4/17 to 31/3/18 despite not being provided with a properly estimated account covering the correct Account Year. Therefore, the tribunal accepts Mr. Blessing's evidence and finds he has paid £1,626 for the Account Year 1/4/2017 to 31/3/2018.
18. The tribunal further finds that Mr. Blessing has not been provided with estimated service charges for the period 1/4/2018 to 31/3/2019 but has

nevertheless continued to pay his monthly instalments at the rate of £135.50 per month.

19. The tribunal finds that Remus was late in invoicing Network Homes the estimated service charges for the period 1/1/2017 to 21/12/2018 in the sum of £1580.97 as it did not produce this invoice until 18/7/17. The tribunal finds that Remus also served an invoice on the same date on the respondent for estimated service charges in the sum of £1547.79 for the period 01/01/2018 to 31/12/2018. In the Invoice 807049 dated 28/11/2017 from Remus to the respondent the interim service charge for the calendar years 2017 and 2018 were demanded. The respondent paid these sums and then demanded the apparent shortfall between £3128.76 paid by the respondent and the sums paid by Mr. Blessing, as the respondent had incurred the shortfall during that service charge year 1/4/17 to 31/3/18.
20. The tribunal finds that this sum of £1,599.40 is not due from or payable by the applicant as it represents the payment of service charges for a period for which Mr. Blessing has not been provided with a proper estimate of service charges in accordance with his lease; which do not represent “actual” charges incurred by the respondent and which do not represent any shortfall between any between “actual” charges and (incorrectly) estimated service charges identified by the respondent landlord but have arisen to the respondent’s use of the incorrect accounting (calendar) period when demanding payment from Mr. Blessing.
21. The tribunal finds that it is regrettable that the respondent has contributed to the confusion arising as to the service charges payable by Mr. Blessing, by failing to adjust the estimated service charges it receives from Remus for a calendar year to properly reflect Mr. Blessing’s service charge period. The tribunal also finds that the respondent has failed to recognise that, the demand for £1599.40 made on in July and December 2018 reflecting an (alleged) shortfall in service charges for 2017 and 2018 was not in fact payable by Mr. Blessing as he was already paying monthly in accordance with his lease terms and for the period 1/4/17 onwards. The tribunal finds that the respondent has in its letter of 13 December 2018 has incorrectly asserted that its final account shows the difference between the estimated service charged to Mr. Blessing’s account and the actual service charges for the subject property for the period from when the property was first sold in 2016-17 to 31 March 2018, as the actual period covered by the payments made by the respondent ended 31/12/2018 and not 31/3/2018.
22. The tribunal finds that the confusion has been added to by the respondent’s failure to take into account Mr. Blessing past, present and

future payments and offset them against the lump sums it paid for the two full calendar year as required by para.2 of the Sixth Schedule in the Head Lease.

23. Further, the tribunal finds that in any event, Mr. Blessing is only liable to pay for any shortfall in his service charges after the Account Year has ended and in accordance with clause 7.5 of his lease. Therefore, the tribunal finds that the interim demands for payment made by the respondent are not in accordance with the lease and that Mr. Blessing is not liable to pay the sums demanded.
24. At the hearing, the tribunal was provided with the certified accounts of Remus which were provided to the respondent in June/July 2019. These appeared to show an overall credit to Flat 6 over the two year calendar period to end December 2017 and December 2018 and provided a further indication that the applicant is very unlikely to owe the amount the respondent is invoicing: ie the adjustment for 17/18 of £1599.40.
25. In conclusion, the tribunal finds that Mr. Blessing is not liable to pay the sum of £1,599.40 said to be the actual service charges for the period 2017/18.
26. In light of its findings, the tribunal accedes to the applicant's written request for the reimbursement by the respondent of the application fee (£100) and the hearing fee (£200).

Name: Judge Tagliavini

Date: 20 February 2020

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 this 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 each 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.