



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

Case Reference : **LON/00BH/LSC/2020/0169
[PAPERREMOTE]**

Property : **16 Royal House, 49 Church Road,
London E10 5JL**

Applicant : **Vanessa Elaine Muirhead and Patricia
Anne Twyford**

Representatives : **-**

Respondent : **London and Quadrant (L&Q) Housing
Trust**

Representative : **-**

Type of Application : **For the determination of the liability to
pay and reasonableness of service
charges (s.27A Landlord and Tenant Act
1985)**

Tribunal Members : **Judge Professor Robert Abbey**

**Date and venue of
Hearing** : **10 November 2020 by a paper-based
decision**

Date of Decision : **10 November 2020**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that: -
- (2) The disputed service charges for water consumption charges are unreasonable and the applicant is not liable under the terms of the lease of the property to pay the service charges as demanded for the years in dispute.
- (3) The tribunal further determines that it is just and equitable in the circumstances for an order to be made under section 20C of the Landlord and Tenant Act 1985 that 100% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charge payable to the respondent in respect of service charges payable for services provided for **16 Royal House, 49 Church Road, London E10 5JL**, (the property) and the liability to pay such service charge.
2. The applicant is the lessee of the property pursuant to a long lease. The Disputed Charges are as set out in the schedule provided by the Tribunal and utilised by the parties for the service charge years from 2014-15 through to 2020-2021. They concentrated upon water consumption charges with regard to these service charges years.
3. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

4. The tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions.
5. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (PaperRemote). A face to face hearing was not held because it was not practicable given the Covid-19 pandemic (and the need for social distancing) and no one requested the same or it was not practicable and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are

in the electronic bundle described above and supplied by both parties to this dispute.

6. In the context of the Covid 19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

The background and the issues

7. The property is a purpose-built block of seven flats located in East London. (The building actually comprises two cores, Flats 1-11 and Flats 12-18, comprising a total of eighteen flats. All were originally let under Shared Ownership leases. Six of the original shared ownership leaseholders have undertaken full staircasing and own the full equity shares in their flats). Residents pay Thames Water for water and waste services supplied to each flat of approximately £200 per year.
8. Since 2014 L&Q has included additional and variable communal water consumption charges issued by Castle Water as part of the service charges. In the application the total amount across the years of the claim was said to total £1069.09. The only communal water supply for the building was the water pipe that cleaned the bin hose. The applicant believes that this small item could not account for the expenditure claimed by the respondent.
9. The lessees of the flats at the property hold long leases which require the lessor to provide services and the lessees to contribute towards their cost by way of a service charge. The lessees must pay a percentage described in his lease for the services provided.
10. Accordingly, the issues arise for determination are with regard to the charges and issues listed in the schedule mentioned above and will be considered item by item by the Tribunal following the same list. The Tribunal will consider whether the sums claimed for the service charge year are reasonable within section 19 of the Landlord and Tenant Act 1985, (were the services reasonably incurred and were they of a reasonable standard).

Decision

11. The tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal will consider each item in dispute, taking into account the written and oral representation made on behalf of the parties before the

hearing. The amounts in dispute as listed in the schedule mentioned above are as follows: -

2014-15 £257.53

2015-16 -£73.58, (refund)

2016-17 £85.84

2017-18 £187.03

2018-19 £226.22

2019-20 £47.10

2020-21 £265.67 (estimated)

12. Of the disputed charges the applicant's case is that " L&Q have provided a breakdown of the cost of the communal water consumption in the service charge bill and they provided the associated bill from Thames Water (labelled "Landlord supply") but have provided no independent surveyor's report to verify what these communal water charges cover in terms of actual communal water supply and services that are in addition to the water bill that I paid Thames Water for my individual property based on meter readings."
13. In reply the respondent's case is that "Under the Shared Ownership lease dated 30 August 2013 Clause 3.3 outlines the applicant's obligations to pay towards the Landlords Outgoings, where they relate to the whole or part of the building. The Service Provision Clause 7.4 allows that the relevant expenditure included in the Service Charge shall comprise of the expenditure for the provision of services for the Building. The Landlords Communal Water Supply is a shared service for the whole of the building, and we have recovered a fair proportion of this cost in accordance with the lease terms."
14. In the applicant's reply the same position was clearly expressed "London and Quadrant have not provided an independent surveyor's report to verify what the communal water charges issued by Castle Water cover in terms of actual communal water supply and services as a direction from the Tribunal. Without this evidence or any previous documentation from London and Quadrant to verify what these shared costs relate to now and when the charges were first incurred, I dispute that these costs are relevant expenditure for services for the building payable under the lease terms Service Provision Clause 7.4."

15. The Tribunal was able to see multiple invoices from both Thames Water and Castle Water but the latter invoices were not supported by any great detail as to the actual supplies provided. In a witness statement made by Tom Smith on behalf of the respondent he stated that “L&Q have incurred water consumption bills for a Landlords’ Supply meter from suppliers Thames Water and Castle Water within the period in dispute.... 7. We have included the net annual consumption cost or credit in each year’s set of service charge accounts for the Premises in accordance with the terms of the lease, for years 2014/15 through 2019/20. Clause 7.4 states that relevant expenditure includes, among other items, “provision of services for the Building” which I would take to mean communal water supply. 8. Similarly, for the 2020/21 year where we have not yet completed final accounts, we have set the estimated service charge in line with Clause 7.3 of the lease, based on anticipated expenditure likely to be incurred during the period. “
16. He goes on to say “9. Because the bills we have paid have been designated as for a ‘Landlords’ Supply’ at Royal House, we have taken this to be a cost rechargeable to all leaseholders of the Building and have passed on costs accordingly. We divide the costs equally between all eighteen lessees of the building. 10. The Applicant has produced evidence that she is billed separately for water consumption within her own Premises. This raises the question of what the landlords’ supply covers. 11. L&Q has approached Thames Water as the owners of the landlords’ water supply to give consent to conduct a survey to trace the extent of the supply and to confirm what areas of the Building it covers. 12. Due to the ongoing Covid-19 pandemic, Thames Water have not yet given permission for a survey to take place. 13. In lieu of a definitive report clarifying the beneficiaries of the landlords’ supply, we are operating on the principle that the bills are valid to be recharged to the leaseholders of the Building. 14. If the outcome of any future survey reveals anything different to this principle, or if there is any adjustment to be made to the rates paid to the water suppliers for previous years’ charges, we will naturally reflect this in leaseholders’ accounts.”
17. The Tribunal was shown a letter dated 26 October 2020 issued by Castle Water and addressed to the respondents that was concerned with the water supply at 47-39 Royal House. In the letter Castle Water stated “Transferring of your data from Thames Water to Castle Water was covered by the Statutory Transfer Scheme which governed the transfer of all their registered commercial accounts to Castle Water prior to 1 April 2017. Our receipt of these details was therefore authorised. However, in the case of 47-49 Royal House, this was erroneously transferred to us and the account should not have been billed for commercial water use.” It seems an error was made with regard to the water invoice.
18. More importantly this error was confirmed in the next paragraph of the letter from Castle Water where it was stated that “I have been in contact with the Wholesaler for the premises (Thames Water) who have

informed me that they have completed their investigation into SPID (Supply Point ID): 3012262822W19 and can confirm this has been deregistered from the non-household market. Since the principle use of this property is for residential purposes, the SPID 3012262822W19 should not have been in the non-household market and therefore not transferred to Castle Water. As such, the details on this account will be passed onto our finance team who will arrange a refund on the account. Please disregard any of the invoices or late payment charges you have received from Castle Water, and this will be rectified in due course.” This makes it perfectly clear that no charges should have been passed on to the tenants with regard to this Castle Water charge and as such any such demand must be erroneous and unreasonable.

19. For all the reasons set out above the tribunal is of the view that the service charges for the water supply from Castle Water are unreasonable and not payable by the applicant.

Application for a S.20C order

20. It is the tribunal’s view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision set out above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 100% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.
21. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them.
22. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also took into account all oral and written submissions before it at the time of the hearing.
23. It was apparent to the tribunal that there had been a long history of the applicant querying this charge with little or no response from the

respondent. Indeed, the applicant has resorted to a complaint to the Ombudsman along with taking steps under legislation that exists to protect leaseholders. However, it has taken this application to reach a resolution notwithstanding the leaseholder first raised this issue several years ago. Accordingly, it can be seen that the tribunal did take issue with elements of the conduct of the respondent and could see where the applicant was able to take issue with the conduct of the service charge accounting process in relation to these water charges. For all these reasons the tribunal has made this decision in regard to the 20C application.

24. The applicant needs to be aware of the decision in *Plantation Wharf Management Limited V Blain Alden Fairman And Others* [2019] UKUT 236 (LC). In this case the Upper Tribunal made it clear that whilst it was possible for this Tribunal to make an order in favour of a class of leaseholders, it could only do so if each member of the class had applied for such an order or authorised another party to apply on their behalf. Accordingly, this s.20 order will only apply to the leaseholders who are named as the applicant. It is open to other leaseholders to consider their own applications should the need arise.

Name: Judge Professor Robert
Abbey

Date: 10 November 2020

Appendix of relevant legislation and rules

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.

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.