FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2020/0224**
HMCTS code	**:**	**V: VIDEO.**
Property	**:**	**68B Bramber Road, London W14 9PB**
Applicant	**:**	**Northumberland and Durham Property Trust Limited.**
Representative	**:**	**Mr. Palfrey of Counsel;** **Mr. Robin of Seddons, LLP Solicitors;** **Mr. Biley of Grainger PLC.**
Respondent	**:**	**Triplerose Limited.**
Representative	**:**	**Mr. T. Hammond of Counsel;** **Ms. Scott, Scott Cohen Solicitors;** **Mr. I. Moskovitz** **Mr. Anyui – observer.**
Type of application	**:**	**For the determination of the liability to pay service charges under S.27A Landlord and Tenant Act 1985.**
Tribunal member	**:**	**Judge Aileen Hamilton-Farey** **Tribunal Member Mrs. F. MacLeod**
Venue	**:**	**Remote.**
Date of decision	**:**	**19 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was V:VIDEOREMOTE. The tribunal was provided with a bundle of documents for the hearing.

Decisions of the tribunal

(1) The tribunal determines that the sum sought of £26,938.57 is reasonable and payable by the respondent;

(2) This includes major works undertaken by the applicant that the tribunal determines were reasonable in both cost and standard and the respondent is liable for the sum of £18,408.68 in respect of those works.

(3) The management fee of £250.00 per unit per annum is reasonable and payable by the respondent.

(4) The audit fees are reasonable and payable;

(5) The legal fees of £5,116.51, are reasonable and payable by the respondent;

(6) Insurance premiums have been paid by the respondent and therefore are not the subject of this determination.

The Application

1. By an application dated 24 January 2020, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the respondent in relation to the service charges years 2015/6, 2018/19. The original sum claimed was £27,138.57, but this was revised by the applicant during the hearing to £26,938.57 and which took account of credits and reductions on the accounts made by the landlord. This sum, it was said, reflected all payments made by the respondent.

2. It is accepted by the parties that the applicant is no longer the landlord of the property, a collective enfranchisement having taken place in 2019/20, and the sums sought relate to periods before the acquisition. In particular the applicant says that the legal fees are payable, even though it is not the landlord, because they relate to chasing arrears of service charge for the period when it was the landlord.

3. Directions were issued by the tribunal on 1 September 2020. These were subsequently revised on 29 October 2020 and contained details of how the parties were to present their respective cases at the hearing. The directions required a Scott Schedule to be prepared, in the event the schedule prepared by the respondent did not accurately comply with the directions, but it was useful to the tribunal in any event.

4. At the hearing the applicants were represented by Mr Palfrey of Counsel, Mr. Robin of Seddons and Mr. Biley of Grainger PLC. It became apparent during the hearing that Mr. Biley only had experience of the applicants' policies and procedures now and had not been involved in managing this property during the periods in question. He was therefore unable to assist the tribunal to any great extent.

5. The respondents were represented by Mr. Hammond of Counsel, Ms. Scott of Scott Cohen, Solicitors, Mr. Moskovitz of Triplerose Limited. Also in attendance was Mr. Antjui a trainee solicitor.

6. Mr. Hammond gave his opening statement and then proceeded to ask for guidance in relation to some procedural matters.

The procedural matters:

7. Mr. Hammond said that the applicant had not provided any proof of payment for the major works, that evidence was being submitted late in the day and should not be admitted, and that no witness statement had been lodged in accordance with the directions. He also asked that Mr. Moskovitz's witness statement, although late, be accepted into the bundle.

8. He said that in any event service charges were not payable because no Summary of Rights and Obligations ("SOR") had accompanied any of the demands and until this was rectified no payments were due from the respondent, and that the demands themselves failed to satisfy S.47 and S.48 of the Act that required the landlord's name and address to be shown on the demand.

9. Mr. Palfrey's response was that Mr. Moskovitz's late statement should not be admitted; that proof of payment had been supplied, although only recently, and that some new colour photographs of the building should be admitted into the bundle. He said that these were merely the colour copies of the black and white photos already within the bundle and just provided some clarity of the images.

10. The tribunal rose to consider the issues raised.

11. We considered that we would admit all of the late evidence from the parties on the basis that it would be fair to both sides to rely on this evidence, but more importantly, that it would assist the tribunal.

The Applicant's case:

12. Mr. Palfrey set out the basis of his clients' case. He drew our attention to the statement of case [58], the lease [20] and confirmed that the property was held originally by the respondent under the terms of a lease for 125 years from 16 March 2005. He also confirmed that the freehold had been sold by the applicants to the two tenants in the building (the respondent and one other) on 3 September 2020. He also confirmed that the sums sought all related to the period before the transfer of the freehold title.

13. The tribunal's attention was drawn to the service charge provisions of the lease, the landlord's obligations in respect of redecoration, repairs and insurance [4(b),(b),(c)]. That at Clause 4(g)(i) the landlord had the right to employ managing agents and accountants and that 4(g)(ii) enabled the landlord to reclaim legal costs. He also said that 4(j) was a 'catch-all' clause that would cover issues like health and safety, and legal fees if these could not be covered in (g).

14. It was not disputed he said that the leaseholders were each liable for a 50% contribution towards the service charge; that the service charge was payable on the 24 June and 25 December in each year and that an interim charge could be levied by the landlord.

15. In addition, the lease at page 39 allowed for a further interim charge if required. There was an end of year process whereby the expenditure would be certificated and balancing charges invoiced.

16. Having heard Mr. Hammond, Mr. Palfrey then took us to some of the demands for service charge. It appeared that originally this property was managed by a company called Eddison. It was their practice to issue demands with the SOR on the reverse. Unfortunately, the documents sent to the applicant by Eddison's contained only the front page and not the reverse and it was therefore impossible to see whether or not the SOR had been included. However, he assured us that it had been.

17. With respect to the S.47/48 issue raised by the respondent, Mr. Palfrey showed us a demand from Eddison that clearly had the landlord's name and address on it, although probably not as prominently as one would have liked. It did not appear from the evidence that the respondent disputes the validity of the demands issued by Grainger PLC on behalf of the applicant, but for completeness, we were shown examples of those demands, which appeared to comply with the legislation.

18. One of the matters raised by Mr. Hammond was the lack of a letter of engagement for auditors, and we were shown an example on the 2017 accountants report.

19. The respondent had also queried the necessity for, and cost of a fire risk assessment. First of all, Mr. Palfrey took us to the invoice for £168.00 of which the respondent had a 50% liability [£84]. The report was in a standard form, and Mr. Palfrey said that its purpose was clearly to have a risk assessment, and this was required under statute. That Eddison had not carried out an assessment and therefore it was the duty of the landlord to do so. He said that the cost was reasonable, and the respondent was liable for it under the lease.

20. The major item in dispute was the major works contract. There appeared to be no dispute that S.20 Consultation had been properly conducted and we were shown the consultation letters, the priced specification and the invoice for the works from the contractor, with a further document showing payment of the monies. We were also shown the colour photographs of the property before and after the works had been undertaken, it is clear from these that works had been carried out.

21. Finally, Mr. Palfrey accepted that there were no invoices for the accountants, but the costs were clearly shown in the statement of expenditure. That the demands from Eddison had only one address on them, that of the landlord, and that, due to the handover from Eddison to Grainger, some of the documents had not been received and they could only produce what they had.

The Respondents' Case:

22. Mr. Hammond called Mr. Moskovitz who was cross examined by Mr. Palfrey.

23. Although in this instance Triplerose Ltd is a tenant, it must also be said that they are a large residential landlord with significant tribunal experience.

Major Works:

24. Dealing first of all with the major works, Mr. Moskovitz said that any service charge payments not expended by the landlord should have been placed in the reserve fund, and in his estimation the fund should have contained £13,791.40 when the major works were carried out, instead of the £5,000 claimed by the landlord. We had no evidence to show that payments of this magnitude had actually been paid by the respondent, and in fact when looking at the respondent's payment schedule it appeared that no payments had been made.

25. Mr. Moskovitz said that the landlord's surveyor did not do a property specification, and that the works were not done to a standard. He pointed to the photographs that appeared to show some missing mortar to flashings, slipped slates and some loose wiring to the ground floor bay window roof. He said that there was bad management of the contract but was unable to answer further questions.

26. He relied on his own surveyors' inspection letter that referred to those loose wires, but raised no real questions of poor workmanship or that work had not been carried out but paid for, as alleged by Mr. Moskovitz.

27. Mr. Moskovitz also referred to the credit given to the other tenant in the building (and shown on that tenant's service charge schedule), he reiterated that the reserve fund should receive the balance of any service charges paid and not expended, whilst admitted that he had not made any payments himself.

Demands:

28. Mr. Moskovitz said that the demands did not meet the statutory requirement because of the lack of the landlord's name and address, and that he did not remember receiving the summary of rights. He appeared to accept that the Grainger demands met the requirements but said that the demands had been received late (more than 18 months after the expenditure had been incurred) and that he had not received a S.20B letter.

Health and Safety:

29. Mr. Moskovitz said that the inspection was not required because the building did not have any common parts. He did not accept that the staircases in the building had not been demised to the tenants and were therefore in the ownership of the landlord, and maintained the inspection was not necessary.

Buildings insurance:

30. Although this had been paid by the respondent each year, he questioned the quantum and said, in his opinion, that buildings insurance a property of this size should be in the region of £75.00 to £100.00 and that is the amount the respondent would have charged. No evidence was provided to us to support these figures.

Legal Costs:

31. Mr. Hammond's case was that the legal costs claimed were too high and that there had been significant over-counting in relation to the legal fees. He said that the applicant had not served a demand with a SOR and had produced no witness evidence to support the amount claimed. He relied on the case of *Sella House v Mears* in which the upper tribunal said that legal fees were not administration charges and that therefore these costs could not be recovered under Clause g(ii) of the lease.

32. Mr. Palfrey disagreed. He said that the costs were within the normal range, and that his clients were only seeking 50% of the amount actually expended. Some of the costs related to a previous tribunal hearing relating to a S.20ZA dispensation claim. One of the tenants had requested a hearing and it had been necessary for the applicant to prepare the case, and where finally the respondent in question did not attend the hearing. In his view the costs were recoverable under Clause 5(4)(g) and formed part of the S.20 consultation process, which in itself was part and parcel of maintaining the building.

33. He said that Sellar House could be distinguished because the term 'administration' could be wide enough to cover the recovery of service charge, and in his view should not exclude the costs of consultation.

The tribunal's determination and reasons:

Major works:

34. We are satisfied that the major works were carried out to a reasonable standard. The issues raised by the respondent were fairly minor, some of which were not included within the specification, and the assertions that the works was not properly specified or supervised lacked any evidence to support them.

35. We are not persuaded that any balance of the service charge should be placed in reserve, and despite Mr. Moskovitz saying that that is what his company would do, there is no requirement in these circumstances for such a transfer, and in any event the respondent had not paid any service charge for a transfer to be made.

Health and Safety :

36. Although there are only very small areas of common parts, we find it reasonable where a landlord changes agents, and without a current fire risk assessment, for the landlord to have an inspection carried out and report provided. We also find the cost of this exercise to be reasonable, and no evidence was provided by the respondent to suggest otherwise. We allow the health and safety costs claimed in full.

Buildings Insurance:

37. Although this was queried by the respondent, we had no evidence to support his claim that the costs were too high. For completeness if these costs had not already been paid by the respondent, we would make a finding that the costs were reasonable and payable.

Management fees, accountancy fees (administration) and legal fees:

38. We find that each of these costs are reasonable and payable by the respondent. We had no evidence that the management fee should be in the region of £75 - £100, and given the respondents own management portfolio, it would have been easy for them to provide details from their own stock. We also have no evidence that the accountancy fees were too high or unreasonable and allow both the management and accountancy fees in full.

39. With respect to the legal fees of attending the last tribunal. The tribunal did not make a S.20C Order and therefore permitted the landlord to place these fees on the service charge. It cannot be the fault of the landlord that a respondent leaseholder requests a hearing of an application for dispensation as is their right, and then fails to attend or provide any evidence opposing the application. In our view the costs of the previous tribunal application is reasonable and the respondent is liable for their share.

Demands:

40. We are satisfied on the evidence before us that the demands made by Grainger were properly drawn up and the claim that they do not meet the requirements of S.47/48 is not supported by any evidence.

41. We are also satisfied that the demands were made within time, and that no S.20B point succeeds.

42. With respect to the demands from Eddison, on balance we are satisfied that these met the requirements and that it is plausible that the SOR was included on the reverse of those demands. We are satisfied that, given the respondents' management experience, that if the SOR were missing, they would have raised this point when the demands were received in 2014/15 and not as part of the tribunal proceedings. We had no evidence that such a challenge was made at the time.

43. We are also persuaded that, despite some ambiguity, the Eddison demands did contain the name and address of the landlord so as to comply with S.47/48 and that the demands were sufficient to meet the statutory requirements.

44. Similarly, although Mr. Hammond said that the interim demands were challenged, we are satisfied that the applicants comply with the lease by providing the notice in writing.

Summary:

45. Overall, Mr. Moskovitz was not a convincing witness. He provided no evidence to support his assertions that costs were too high, that work had not been carried out to a reasonable standard, and appeared ill prepared for the hearing.

46. In addition, although he maintained that some of the credits and end of year adjustments on his account were payments they clearly were not and were the usual adjustments that one would see on a rolling statement of account, albeit somewhat confused. It was clear to the tribunal that the applicant had not made any service charge payments for several years contrary to the terms of the lease.

47. The applicants have demonstrated to the tribunal that, in a difficult situation (where there was a lack of handover information), they were able to show that accounts were produced, demands issued, and where appropriate balancing charges demanded. They produced some invoices for not all, but some of the expenditure and also accepted that some certificates were missing but relied on the accounts that had been duly certified as correct, and we are persuaded by those documents.

48. Finally, the major works appear to have been undertaken to a reasonable standard, and no real challenge has been raised by the respondent except for some very minor issues that do not render either the works or specification unreasonable.

49. In the circumstances the tribunal allows all of the costs claimed by the applicant, including their legal and administration fees.

Judge Aileen Hamilton-Farey
19 March 2021

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).