



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

Case Reference Code: : **LON/00AM/LSC/2019/0430
P:PAPERREMOTE**

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**

Venue & date of hearing : **10 Alfred Place, London WC1E 7LR
20 April 2021
P:PAPERREMOTE**

Date of Decision : **21 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was **PAPERREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a hearing on the papers. The tribunal was referred to the parties' documents which included the original hearing bundle with additions numbering pages 1 to 252 as the additional copy of the applicant's statement of 14/02/2021 and the up to date Schedule of Charges.

THE TRIBUNAL'S SUMMARY DECISION

- (1) The tribunal finds that the Applicant is liable to pay the sum of £1,599.40 claimed by the Respondent as the balancing payment for the actual service charges incurred in the service charge year 2017/2018.**

- (ii) The tribunal finds that the sum of £1,599.40 has been reduced to arrears of £692.84 as at 23 November 2020.**

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 a balancing payment in respect of the service charge year 2017/2018. In a decision of the Upper Tribunal dated 18/11/2020, setting aside the tribunal's previous decision dated 20/02/2020, the respondent was held to be entitled to charge and the applicant liable to pay a balancing charge in respect of the service charge year 2017/2018.

2. Therefore, the tribunal is now only required to carry out an 'accounting exercise' in order to ascertain whether the applicant has in fact paid the balancing payment of £1,599.40

The applicant's case

3. The applicant maintains that the sum of £1,599.40 has already been paid by him through his standing order for the payment of rent and service charge which have been made consistently since his service charge/rent account was set up and therefore no further sums are due

in respect of the service charge year 2017/2018. In support of his application the tribunal was provided with a written statement from the application dated 14 February 2021 and accompanying exhibits.

4. In this statement, the applicant asserted;

[F]rom the July 2017 invoice billing date, and (sic) I continued to pay my monthly service charge, this means my balance of £1,599.40 was being reduced by £135.50 per month.....NH account statements do not reflect this however, making it appear as if I have not paid this amount, when in fact it was completely paid by Dec 2018, the final month of the invoiced period and the month they applied a "final account adjustment." NH received this payment broken into monthly amounts up to an including Dec 2018 but have failed to recognise them and adjust my account balance to reflect this.

The respondent's case

5. In an email to the applicant dated 16 November 2020 the respondent set out the service charges due for 2017/2018; 2018/2019' 2019/2020 and 2020/2021. These specified:

2017/2018 (01/4/2017 to 31/03/2018):

Monthly rent: £598.13
Monthly estimated service charge: £135.50
Total: £733.63

2018/2019 (01/04/2018 to 31/03/2019)

Monthly rent: £624.45
Monthly estimated service charge £135.50
Total: £759.95

6. In accordance with this schedule and the respondent's demands, the applicant paid the total sums due for these two service charge years by a monthly payments in the form of a standing order. On receipt of the monthly payment the respondent apportioned the sums received, first to the service charge due and allocated the remaining amount to the rent as the applicant had not specified otherwise as to how the monthly payments should be allocated. This had the effect of occasionally leaving a shortfall in the rental payments where the rent had increased but the applicant's standing order was not immediately altered to take this into account.

7. However, having agreed that current 2017/2018 service charges would be paid monthly by the applicant, the respondent demanded in advance and as part of a 'balancing charge' for the service charge year 2017/18 the entirety of the estimated service charge and gas charges covering the period 01/01/2018 to 31/12/2018 in the sum of £1547.79 (Invoice number 807049).
8. The respondent also set out the sums said to make up the total balancing charge of £1,599.40 in the table copied below.

Invoice Detail	Invoice Date & Number	Invoice Description	Full invoice Amount £	Actual Amount Recharge £	Notes on actual recharged to property
Managing Agents	18/07/2017 769203	Buildings insurance for the period 29/11/16-31/12/216	11.25	3.75	Calculated pro rata from completion
Managing Agent	18/07/2017 769204	Interim service charges 20/12/2016 - 31/12/2016	47.89	47.89	Recharge full year invoice
Managing Agents	18/07/2017 769207	Interim service charges in advance 01/01/2017 to 31/12/2017 Estimated Gas Charge in Advance 01/01/2017 to 31/12/2017	1580.97	1580.97	Recharge full year invoice
Managing Agents	28/11/2017 807049	Interim service charges in advance 01/01/2018 to 31/12/2018 Estimate Gas Charges in Advance 01/01/2018 to 31/12/2018	1547.79	1547.79	Recharge full year invoice

9. The respondent stated that the total recharged for all four invoices above amounts to £3,180.40 plus a management fee from Network of £45.00 per annum. Therefore, the actual costs incurred in the service charge year 2017/18 was £3,225.40. Of this sum, the applicant had paid

£1,626.00 leaving a balance of £1,599.40 for the service charge year 2017/2018.

10. The respondent also provided the tribunal with an up-to-date Schedule of the sums incurred for rent and service charges and the sums paid by the applicant and their apportionment to the rent and to the service charge account covering the period 22/07/2017 to 23/11/2020

The tribunal's decision and reasons

11. The tribunal finds there is no dispute in fact between the parties as the sums paid by the applicant and received by the respondent. The tribunal finds that the dispute centres on the allocation of the applicant's monthly lump sum payments to his rent and service charge account and the demand for both monthly service charge payments as per the respondent's schedule and the demand for a lump sum advance payment of 12 months' (estimated) service charges as part of the 'balancing charge.'
12. In its decision dated 26 November 2020, [2020] UKUT 331 (LC) the Upper Tribunal determined that *'The fact that those sums included the Estimated Management Costs payable by Network Homes under the headlease for the 2018 calendar year did not make the balancing charge an estimate or require that it be collected from Mr Blessing only by monthly instalments.'*
13. The Upper Tribunal also held that,

Network Homes is not required by the Lease to apportion the charges it has incurred during the account year so as to differentiate between charges paid in respect of the account year itself and charges paid in respect of some future period. The relationship between the payment provisions of the Lease and those of the headlease is poorly designed and is liable to result in large sums becoming payable in advance despite the Lease seeking to avoid unexpected fluctuations. Under the headlease, the Estimate Management cost for the calendar year is payable by a lump sum in advance which falls due here months before the end of the Lease's Account Year. That lump sum will always be recoverable from the leaseholder by means of a balancing charge in the Lease. The obvious intention of the Lease itself is that the Service Charge should be paid in equal monthly instalments with only a balancing charge at the end of the year, but in practice the leaseholder is required to pay up to nine months in advance.

12. Therefore, the tribunal finds as predicted by the Upper Tribunal, that in practice the applicant is required to pay service charges both by way of monthly payments as well as in advance. Therefore, using the respondent's up-to-date Schedule, the tribunal finds that the 'balancing charge' of £1,599.40 which is payable by the applicant has been reduced to arrears in the sum of £692.84 as of 23 November 2020.

Name: Judge Tagliavini

Date: 21 April 2021

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.