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

**Case Reference** : LON/00AC/LSC/2016/0141

**Property** : Flat 1 and Flat 5, Clifford Lodge,  
Bibsworth Road, London N3 3RS

**Applicants** : Dr Barbara Blumsohn } Flat  
Dr Aubrey Blumsohn } 5  
Mrs Smita Patel – Flat 1

**Respondent** : Clifford Lodge Ltd

**Type of Application** : Liability to pay service and  
administration charges

**Tribunal** : Judge Nicol  
Mrs R Turner JP

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

**Date of Hearing** : 14<sup>th</sup> July 2016

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**DECISION**

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**Decisions of the Tribunal**

- (1) The two sums of £1,500 each, demanded from each Applicant by the Respondent in respect of service charges for 2014 and 2015, are not payable.
- (2) The interest charge of £153.50 demanded from the first Applicants by the Respondent is not payable.
- (3) The Tribunal orders under section 20C of the Landlord and Tenant Act 1985 that the Respondent may not add their costs of these proceedings to the service charge.

- (4) The Respondent shall reimburse the Applicants their Tribunal application and hearing fees totalling £440.

Relevant legislation is set out in the Appendix to this decision.

### **Reasons for the Decision**

1. The Applicants are the lessees of the subject flats, two out of six in the same block. The lessees of the other four flats are members of the same family: Darren Ross (Flat 2), Nicky Ross (Flats 3 and 6) and Jonathan Ross (Flat 4).
2. The Respondent is a lessee-owned company of which the current directors are Mrs Nicky Ross and her son, Mr Darren Ross.
3. The Respondent has made the following demands from the Applicants:-
  - (a) By letter dated 24<sup>th</sup> March 2014, service charge from each Applicant of £1,500 in respect of the year 1<sup>st</sup> April 2014 to 31<sup>st</sup> March 2015;
  - (b) By letter dated 1<sup>st</sup> June 2015, service charge from each Applicant of £1,500 in respect of the year 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016;
  - (c) In a letter dated 29<sup>th</sup> January 2016 Mrs Ross claims that Dr Blumsohn must pay an interest charge of £153.50 for failing to pay the amount demanded in 2014.
4. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability and reasonableness of the first two items and under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the payability and reasonableness of the third item. They also seek an order under section 20C of the Act that the Respondent's costs of these proceedings should not be added to the service charge and reimbursement of their Tribunal fees.
5. The Tribunal issued two directions orders, the first on 31<sup>st</sup> March 2016 and the second on 13<sup>th</sup> May 2016. The Applicants appear to have done their best to comply and provided an indexed bundle of relevant documents. However, the Respondent did not provide their statement of case until a week prior to the hearing and appear not to have provided full disclosure.
6. The hearing was held on 14<sup>th</sup> July 2016. It was attended by the Applicants, for whom Dr B Blumsohn spoke, and by Mrs Nicky Ross and Mr Jonathan Ross on behalf of the Respondent.
7. It is apparent to the Tribunal that the current directors of the Respondent company, in particular Mrs Ross, have been attempting to manage this building without professional assistance. Those attempts

bear little relation to what is required under the lease, by statute or in accordance with the RICS Residential Management Code. This is exemplified by the fact that they have chosen, apparently at random, a service charge year running from 1<sup>st</sup> April to 31<sup>st</sup> March when the lease clearly specifies that it must be to 24<sup>th</sup> June. Mr Ross conceded that his mother is not a professional managing agent, that English is her second language and that she has been ignorant of the requirements of the lease and the law relating to residential management.

8. The simple answer to the Applicants' question as to whether the three sums are owing must be that they are not because the demands were not accompanied by the summary of rights and obligations required under section 21B of the 1985 Act and under paragraph 4(1) of Schedule 11 to the 2002 Act. However, those provisions are capable of being only suspensory. In the event that the Respondent does in due course comply with them, the Tribunal has gone on to consider the payability and reasonableness of the three charges on the other grounds put forward by the Applicants.
9. The accounts for the year ended 31<sup>st</sup> March 2015 include "professional fees" of £1,800. This is described in another document as a "management fee". It was paid to the two directors of the Respondent company although it is not clear what services they have provided in return – those services which have been provided have not been provided competently or professionally. In any event, the lease only provides for the costs of professionals being paid through the service charges and Mrs Ross and Mr Ross are not professional managing agents. The lease has no provision for the Respondent to pay itself for providing management services. In the circumstances, the Tribunal is satisfied that this sum is not payable under the lease but, even if it were, it is not reasonable to charge anything for their services.
10. The same accounts include "Building Insurance" of £1,295. This sum appears to include interest charges because the premiums appear to have been paid using credit agreements. The Tribunal has no idea why this should be so because, as referred to below, there has always been plenty of money in the service charge account to pay all the costs, including the insurance premiums, without resort to credit.
11. Further, the insurance policy is one adapted for buy-to-let landlords and is clearly inappropriate for a freeholder's buildings insurance. It is far from clear that the Applicants have been covered for the appropriate insurable risks. Mr Ross says his mother acted in good faith but this is no excuse – if she didn't know what she was doing, she could and should have sought advice from professionals who could tell her what to do. In the circumstances, charges arising from this insurance are not payable by the Applicants.
12. The accounts for the years ended 31<sup>st</sup> March 2014 and 2015 include items for cleaning, garden maintenance and water charges which would appear reasonable on their face. The Applicants complain about the

standard of cleaning but they were only charged £75 for a whole year. However, service charges were properly demanded by previous agents, Defries & Associates Ltd and Jane Thorne Residential, for which Mr Ross and Mrs Ross are liable. There is no evidence that they were ever paid while the aforementioned accounts do not take these assets into account. Effectively, the current directors of the Respondent company are trying to obtain service charges from the Applicants for which they already hold sufficient funds and would have even more funds if they had discharged their own liabilities. It is not reasonable for the Respondent to pursue the Applicants for any service charges where they already have the money to pay the relevant costs.

13. The 2015 accounts include a charge of £600 for accountancy services. This is an amount owed to Pinnick Lewis LLP, together with another charge of £600, for their preparation of the 2014 and 2015 accounts. Whether it is Pinnick Lewis's fault or the Respondent's fault for failing to provide the relevant information, but the accounts are clearly not worth a payment of that amount. As aforementioned, they fail to take account of past uncollected service charges and include sums which should not be there. Aside from that, the accounts also involve few transactions and should have been simple to compile. The accounts are not reliable records of what they purport to show and so this charge is not payable.
14. None of the service charges demanded being payable, there can be no interest payable on them, even assuming the lease permits the charging of interest. Therefore, the amount of £153.50 is also not payable.
15. The Applicants have applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent may not add their costs of these proceedings to the service charge. The lack of proper or sufficient communication in response to the Applicants' very reasonable demands for information is the main reason for the Applicants making their application to the Tribunal. The Respondent has been unable to justify their actions or their demands for service and administration charges. It is just and equitable that the Respondent should bear their own costs.
16. For similar reasons, it is appropriate that the Respondent should reimburse the Applicants their Tribunal application and hearing fees of £250 and £190 respectively.

**Name:** NK Nicol

**Date:** 14<sup>th</sup> July 2016

## **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 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.

### **Section 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **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.

## **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 4**

- (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

**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).