

12139



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

Case Reference : **LON/00AE/LSC/2016/0262**

Property : **7 Charteris Road, London NW6
7EU**

Applicant : **Ms Anya Julliete Dillon (Flat A)
Ms Emily Giselle Plosker (Flat B)**

Representative : **Ms Plosker on behalf of herself and
Ms Dillon**

Respondent : **Ms Lalita Anand**

Representative : **Mr Kumar (KLPA Company Estate
Management Consultants).**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges**

Tribunal Members : **Judge Owusu Abebrese,
Mr Patrick Casey, MRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **3 April 2017**

**APPLICATION TO SET ASIDE DECISION DATED 15 JANUARY
2017**

Decisions of the tribunal

- (1) The tribunal determines that in accordance with Tribunal Procedure (First Tier Tribunal Property Chamber) Rules 2013 Rule 51 (1) (a) and (b) and 51 (2) (b), the decision made on 15 January 2017 is set aside and remade **only** in respect of the calculation of the sums which remain outstanding in respect of service charges within the periods 2010-2016.
- (2) The tribunal determines that following a consideration of the schedule provided by the applicants regarding the payments made and any amounts which may be reasonable claimed by the respondent in accordance with the terms of lease that the amount owing in respect of **Flat A is £1,446.42**, and in respect of **Flat B is £1,768.54**.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The applicant's application to the tribunal to set aside the decision made on 15 January 2017 may be summarised as follows: The applicant states the decision of the tribunal does not take into consideration the table of demands sent to the tribunal on 9 February 2017 in accordance with directions made at the hearing. The failure on the part of the tribunal to take the table of demands into consideration renders the decision to be fundamentally flawed.
2. The applicants also contend that the decision of the tribunal is based on the premise that there was an agreement with the respondent at the hearing that the amount of arrears amounts to £5,600, although it is accepted that this above sum was the subject of discussion at the hearing as a possible basis of settlement it was subsequently withdrawn, and hence the direction by the tribunal regarding a need for further clarification on the sums that are outstanding.
3. The application made by the applicants relate to a decision made by the tribunal arising from the hearing of the original S27A application on 3 November 2016. The applicants at the hearing sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold

Reform Act 2002 (“the 2002 Act”)] as to the amount of service charges [and (where applicable) administration charges] payable by the Applicant in respect of the service charge period 31 December 2010 to 31 December 2016.

4. The table of demands provided by the applicant and the grounds relied contained in correspondence to the tribunal on 9 November 2016 and February 2016 have been taken into consideration. In addition to this the tribunal has also taken into account the decision of the tribunal dated 15 January 2016 and the record of proceedings of the tribunal
5. The relevant legal provisions are set out in the Appendix, in conjunction with the schedule of the amounts determined by the tribunal as outstanding and the full extent of the liability of the Applicants.

The original hearing

6. The second Applicant appeared in person on behalf of both herself and the first Applicant, she was also assisted by her father at the hearing of the appeal. The Respondent was represented by Mr Kumar who is employed by the managing agents of the property.
7. There were two main substantive issues to be determined at the hearing of the application these were firstly in relation to the amount of service charges outstanding and the charges of the respondent for the management. The respondent representative conceded at the hearing that a charge of 15% for management charges was appropriate, and, this was no longer in issue.
8. The second issue was in relation to the outstanding service charges and on this issue the tribunal allowed both parties to adduce documentary and oral evidence. The tribunal after representations from both parties allowed both parties a period of time outside of the hearing room to consult with each other. When the hearing re-convened the applicant informed the tribunal that they had not been able to confer with respondent representative but they were in a position to propose a global figure initially of £5,300, this was subsequently raised to £5,600. **These figures were presented by Ms Plosker on behalf of both applicants, the respondent did not provide any figures.**
9. The figure of £5,600 was initially accepted by the respondent, however as the applicant had expressed uncertainty in respect of certain aspects of the charges the tribunal directed that the parties within seven days of the hearing provided a table of demands of what had been paid and or is still outstanding. The figure of £5,600 proposed by the applicants according to the record of proceeding was **withdrawn by the second**

Applicant when the respondent's representative said he would seek interest on these amounts. The Tribunal gave the parties an opportunity to submit in writing a breakdown of the amounts owed by each applicant and the interest demanded.

10. The tribunal concluded in the decision of 15 January that an award of interest would not be made to the respondent and this part of the decision remains unaffected by the application to set aside.

Setting a decision in proceedings under Property Chamber Procedural Rule 51

11. The applicants in their application plead that the decision of the tribunal dated 15 January 2017 should be set aside on the basis that it is in the interest of justice under Procedural Rule 51 (1) (a), and that one or more of the conditions under Rule 51 (2) applies.

The tribunal's decision

12. The tribunal determines that the decision of the tribunal dated 15 January 2017 is set aside in respect of the amount of service charges payable by the Applicants, **only and that part of the decision is remade in full.**

Reasons for the tribunal's decision

13. The tribunal is of the view that under Rule 51 (1) (a) that the decision should be set aside in part in the interest of justice for the following reasons. It is accepted that at the hearing of the application on 3 November both parties were directed to provide further information clarifying the amount of arrears outstanding.
14. It is also accepted by the tribunal that Ms Plosker sent to the tribunal offices, copied to Mr Kumar, a table of demands/ payments made and amounts outstanding before the decision was made. This, due to an administrative error was not forwarded to the tribunal members. In any event the tribunal finds that there is a procedural irregularity on the facts.
15. The tribunal considers that Rule 51 (2) (b) is applicable. The full text of Rule 51 is provided in the appendix below.

Table of demands/schedule provided by the applicant

16. The tribunal gave careful consideration to the information provided by Ms Plosker on behalf of both applicants. The respondent was provided with a copy of the document by the tribunal but after numerous

communications sent by the tribunal he did not respond. The respondent was also sent a copy of the grounds of the application to set aside the decision made on 15 January 2017, and again, he did not respond.

17. The respondent's position on the schedule provided by the applicants is therefore unknown. The suggested settlement proposed at the hearing by the applicant was clearly a miscalculation on her part of the amounts outstanding/due or paid, this is evidenced by Ms Plosker's conclusions in her schedule.

The tribunal's decision

18. The tribunal determines that the extent of liability of Flat A is £1,446.42 and Flat B is £1,768.54. The decision of the tribunal on 15 January is remade in respect of the service charge liability of the applicants.

Reasons for the tribunal's decision

19. The tribunal has attached to this decision a schedule which sets out the extent of the liability of the applicants in accordance with the terms of the lease, ie the insurance premium plus 15% management fee, the accountancy fee plus 15% management fee, and, where applicable 15% of the ground rent as a management fee on "sums collected" for each year. From these amounts has been deducted payments made by the Applicants whose evidence on this is accepted, to leave the balance outstanding. The tribunal determines these sums as fair and reasonable in accordance with S27A of the Act.
20. The decision of the tribunal sets out the service charges for the years commencing from 2010 to 2016 excluding any charges that arose after the proceedings/hearing.

Application under s.20C

21. At the original hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations 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, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name:
Owusu
Abebrese

Date: 10
April
2017

Tribunal
Judge

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 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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

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 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).

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Setting aside a decision which disposes of proceedings

- 51.—(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—
- (a) the Tribunal considers that it is in the interests of justice to do so; and
 - (b) one or more of the conditions in paragraph (2) are satisfied.
- (2) The conditions are—
- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;
 - (b) a document relating to the proceedings was not sent to or was not received by the Tribunal at an appropriate time;
 - (c) a party, or a party's representative, was not present at a hearing related to the proceedings; or
 - (d) there has been some other procedural irregularity in the proceedings.
- (3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received—
- (a) within 28 days after the date on which the Tribunal sent notice of the decision to the party; or
 - (b) if later, within 28 days after the date on which the Tribunal sent notice of the reasons for the decision to the party.

Flats 7a and 7b Charteris Road, London NW6

FLAT	SERVICE CHARGE YEAR ENDING	INSURANCE + 15% MANAGEMENT	ACCOUNTANCY +15% MANAGEMENT	15% MANAGEMENT ON GROUND RENT	TOTAL DUE	AMOUNT PAID	OWING		
							A	B	
A	31.12.10	-	-	-	-	-	-	-	
B	31.12.10	450.42	69	37.50	556.92	417.77		139.15	
A	31.12.11	450.42	69	15.00	534.42	-	534.42		
B	31.12.11	450.42	69	37.50	556.92	-		556.92	
A	31.12.12	506.91	69	15.00	590.94	506.91	84.03		
B	31.12.12	506.91	69	37.50	613.41	506.91		106.50	
A	31.12.13	526.74	69	-	595.74	526.74	69.00		
B	31.12.13	526.74	69	37.50	633.24	526.74		116.50	
A	31.12.14	573.58	69	-	642.58	673.58	31.00 CR		
B	31.12.14	573.58	69	37.50	679.08	673.58		5.50	
A	31.12.15	625.21	71.88	-	697.09	581.26	115.83		
B	31.12.15	625.21	71.88	37.50	734.59	581.26		153.33	
A	31.12.16	581.26	71.88	-	653.14	-	653.14		
B	31.12.16	581.26	71.88	37.50	690.64	-		690.64	
							1,446.42		
								1,768.54	