

10703



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

Case Reference : **LON/00AQ/LSC/2014/0515**

Property : **Flat 4, Willow Court, Fulbeck Way,
Harrow HA2 6LH("the property")**

Applicant : **Willow Court Management
Company (1985) Limited**

Representative : **Mr J Kennedy of J E Kennedy
Solicitors**

Respondent : **Mrs R Alexander**

Representative : **Mr T Carpenter- Leitch Counsel**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge
Mrs Ladhani Company Secretary
Mr C Kennedy Solicitor
Mr G Symmon of Wilson Hawkins
managing agents
Mrs Y Chehabi Leaseholder**

Also in attendance : **Mr M Foley leaseholder
Ms J Compton
Ms G Haddon solicitor for the
Respondent
Mr A Calver**

Tribunal Members : **Ms M W Daley LLB (Hons)
Mr H Geddes RIBA RIPI JP
Mr L Packer**

**Date and venue of
hearing** : **11 March 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **20 March 2015**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that sum in excess of £100.00 Per annum are not payable as the Applicant has not complied with clause 3 (g) (iii) of the lease.
- (2) The Tribunal finds that should the Respondent wish to apply for cost, as stated at the hearing, then the Respondent must within 14 days of this decision set out their application in respect of cost occasioned by the hearing in the Tribunal. The Applicant will have 14 days in which to respond to any such application.
- (3) All other outstanding matters are remitted to the County Court.

The application

- (1) The Applicant issued proceedings in the Watford County Court on 9/10/2013, in the sum of £5702.00 for outstanding service charges for the period 2007/08 to 2012/13. By consent this matter was transferred to the First-tier Property Tribunal on 15 September 2014.
- (2) A Case Management Conference was held on 20 November 2014, Directions were given by the Tribunal on that date, and the following issue was identified for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges for 2007-2014 were reasonable and payable by the Respondent.
- (3) The relevant legal provisions are set out in the Appendix to this decision.

The background

- (4) The premise which is the subject of this application is a flat situated in a purpose built block of 10 flats built in 1985, in North Harrow. The Respondent is the leaseholder of the premises known as 4 Willow Court pursuant to a lease dated 3/01/1986 (later assigned for the benefit of the Respondent). The Respondent's share of the Maintenance Charge ("Service Charges") is 1/10 of the maintenance charges. The Respondent also owns a 50% share of the freehold company, although no issue turns on this for the purpose of this determination.
- (5) The lease required the landlord to provide services and the Respondent, as leaseholder, to contribute towards the cost of the services, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The Hearing

- (6) At the hearing the Applicant was represented by Mr Kennedy (Senior) of Kennedy and Co. The Respondent was represented by Mr Carpenter – Leitch, Counsel. Also in attendance were the parties referred to above.
- (7) The Tribunal noted that there were two issues that needed to be determined the first issue was whether the Landlord had complied with the requirements set out in clause 3 (g) iii of the lease. The second issue was whether the service charges were reasonable.
- (8) It was agreed by the parties that it was logical for the Tribunal to consider the issue of the landlord's compliance with the lease, as the first issue, and then should the Tribunal consider that there was a prime facie case that the charges were payable then the Tribunal would consider each of the heads of charge for each of the years in question.
- (9) As well as submissions from the advocates the Tribunal heard from Mr Symmon of Wilson Hawkins and Ms Ladhani.
- (10) The relevant clause of the lease referred to above stated:- which states 3 G "... to pay the Lessors the yearly sum of £100 or such sum as may be substituted therefore as herinafter provided (hereinafter called "the Maintenance Charge") being 1/10th of the cost and expenses to the Lessor..."(**the lease set out the various heads of charge and as no issue turned on the charge it has not been set out in full**) PROVIDED HOWEVER that if in any year ending on the Twenty-Fourth day of June such cost and expense to the Lessor shall be more or less than the said sum of £100 then the difference shall be certified by the Lessor's Surveyor whose decision shall be final and binding on the parties hereto and any balance shown by such Surveyor's Certificate as being in excess for the said sum of £100 charged shall be paid by means of a single payment on the quarter day next following the date of the Surveyor's Certificate together with the quarterly

instalment due on that quarter day and PROVIDED FURTHER that in every year of the said term the Lessor may by prior notice in writing increase the maintenance charge to an amount which the Lessor's Surveyor certifies as being the future estimated cost and expense to the Lessor of fulfilling its obligation..."

- (11) The Tribunal were informed that the Applicant sought to rely upon a Surveyor's Certificate dated 18 July 2014. This was a single page document that provided at paragraph 4 in tabular format details of the service charge expenditure for each of the years in question, which was further broken down to include the heads under which the service charge was payable.
- (12) The certificate had been certified by Mr Alex Cheung MRICS on the date shown and stated -: "*...I hereby certify that: the expenditures are properly and reasonably incurred in maintaining Willow Court in accordance with the lease through the years; maintenance charges levied for the years by the Management Company are broadly in line with the lease which is fair and reasonable one [sic] would expect for a block of flats of this type and age..."*
- (13) It was accepted by the Respondent that for the purpose of certifying the additional expenditure Mr Alex Cheung was a surveyor however Mr Carpenter-Leitch did not concede that he was the Lessor's Surveyor.
- (14) The Tribunal were invited to consider that the Respondent had been put on notice that charges had been incurred over and above the £100.00 set out in clause 3 (g) iii of the lease, firstly by reference to the company accounts (which mirrored the service charge accounts) and then by a letter which was sent out by the Applicant with the accounts and the minutes from the AGM. These documents were not before the Tribunal.
- (15) The Tribunal also heard from Mr Symmon but derived limited assistance from his evidence, as although he was the property manager he did not send out the demands and was unfamiliar with the format which they were sent out in and as his firm had taken over the management of the property in 2010, he was therefore not in a position to comment on what had occurred prior to 1 April 2010
- (16) It was however accepted that, although demands had been sent out, these demands had been sent prior to the Surveyor certifying that greater sums had been expended than the £100.00 provided for under the lease.
- (17) After questions from the Tribunal, it emerged that the sums demanded could not be claimed to have been the exact amount incurred over and above the £100.00. This was because the demand served on the tenant did not necessarily correspond with the accounts having been certified.

- (18) Counsel for the Respondent submitted that procedurally the demands needed to be served in strict compliance with the lease; that is that the Surveyor had certified the sums incurred, that this sum was over and above the sum of £100.00 set out in the lease, and that the difference was being demanded. This demand should then be served on the next quarter date. It followed, Counsel submitted, that the demands served were not compliant with the terms of the lease as they had not been served following the Surveyor certifying that additional sums were due.
- (19) There was also the issue that the dates in the accounts did not relate to the quarter dates, as they were produced as company accounts for the end/start of the financial year.
- (20) The Surveyor's Certificate had also been served after proceedings were issued in the county court, so there was no Surveyor's Certificate which could be relied upon at an earlier stage.
- (21) The Tribunal noted that Mr Kennedy although not conceding that the lease had not been complied with, was in some difficulties and sought to say that the sums due could be inferred by reference to the company accounts and also by reference to the Surveyor's Certificate which had now been produced, and in the case of the service charges for year ending 2011/12 complied with what had been demanded.
- (22) The Tribunal informed the parties that the Tribunal needed to consider and determine whether the service charge demands were payable as a preliminary issue as, if the demands were not payable then the issue of reasonableness did not need to be determined at this stage, as without payable demands the application would fail.**

The Decision of the Tribunal

- (23) The Tribunal has carefully considered the evidence and the submissions and, although not set out verbatim has considered all of the evidence referred to by the parties, including the additional documents served at the hearing.
- (24) . The Tribunal has carefully considered the wording of clause 3 g iii of the lease, and have accepted the submissions of Counsel for the Respondent, that is that the Surveyor's Certificate must be produced first, and that it must deal with the excess charges over and above the £100.00. It should indicate that an additional demand will be payable and set out the sum, which may then be demanded on the quarter dates.
- (25) , This determination has not dealt with the reasonableness of the service charge demands. The Tribunal has not found it necessary to consider

whether the sum may be demanded or whether it is likely to be caught by section 20B (1) and (2) Landlord and Tenant Act 1985. This is a matter for the parties.

- (26) The Tribunal determines that any application for costs (which the Respondent may seek as a result of this decision) must be made within 14 days of this decision. Any further submission on cost by the Applicant must be made within 28 days of this decision.
- (27) The Tribunal finds that no additional sums are payable by the Respondent, as the Respondent has complied with the terms of the lease. The Applicant's application for payment in the sum of £5702.00 is determined by the Tribunal to be not payable in accordance with the terms of the lease.
- (28) This matter shall be remitted back to the Watford County Court to give effect to the Tribunal's determination.

Application under s.20C and refund of fees

- (29) The Tribunal in light of its findings makes no order for a reimbursement of the application and hearing fees.

Name: Ms M W Daley

Date: 20 March 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).