

11608



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

Case reference : **LON/00AY/LSC/2015/0388**

Property : **Flat B, 160 Norwood Road, London
SE27 9AZ**

Applicants : **Mr Shahram Kamyab and Mr
Shervan Kamyab**

Representative : **In person**

Respondent : **Mr A Mukadam**

Representative : **In person**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Mr S Brilliant
Mr F Coffey**

**Date and venue of
hearing** : **9 May 2016
10 Alfred Place, London WC1E 7LR**

Date of decision : **28 July 2016**

DECISION

Decision of the tribunal

The Tribunal determines that the Applicants are to pay the following sums in respect of the service charges for the following years:

01 April 2012 - 31 March 2013	£748.35
01 April 2013 – 31 March 2014	£922.50
01 April 2014 - 31 March 2015	£1,146.27
01 April 2015 - 31 March 2016	£1,744.25

The application

1. The Applicants seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by them in respect of the service charge years ending 31 March 2013, 31 March 2014, 31 March 2015 and 31 March 2016.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. At the beginning of the hearing Mr Shervan Kamyab, the son of Mr Shahram Kamyab, was added as an Applicant pursuant to rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
4. The Applicants appeared in person. The Respondent also appeared in person and was assisted by Mr Rodrigues, a director of Marching Elephants Ltd, the Respondent’s managing agent.

The background

5. The property which is the subject of this application (“the flat”) is a second floor flat in a building (“the building”) which has been converted to include a ground floor shop, and 3 flats above. The Respondent purchased the freehold of the building in 2012.
6. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Applicants hold a long lease of the flat. It is dated 13 April 2005 and it requires the landlord to provide services and the tenants to contribute towards their cost by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
8. The Applicants took an assignment of the lease on 5 June 2009. They do not live at the flat but hold it as an investment. Following the Respondent's purchase of the freehold in 2012 the Applicants complained that their rights of first refusal under the Landlord and Tenant Act 1987 had been infringed. The Tribunal has no jurisdiction over that dispute and it will not be touched upon in this decision.
9. On 2 February 2015 the Respondent commenced proceedings against the Applicants in the County Court for unpaid ground rent, service charges and administration charges. On 18 August 2015 Deputy District Judge Harris, sitting in the County Court at Central London, ordered that if the Applicants wished to challenge the reasonableness of the service charge claim, unless by 7 September 2015 they issued proceedings in the Tribunal they would be debarred from arguing that such charges were unreasonable. This order led to the Applicants on 4 September 2015 making the application to the Tribunal referred to in paragraph 1 above.

The issues

10. The issues before us concern the reasonableness of the service charges arising for the year commencing 1 January 2012 and all subsequent years.
11. The service charges we are concerned with fall into five categories, although not every category arises in every year:
 - (1) Management charges.
 - (2) Insurance premiums.
 - (3) Accountancy charges.
 - (4) Repair charges.
 - (5) Cleaning charges.

The lease

12. The Respondent is under an obligation to insure and keep insured the building. The Respondent is under an obligation to maintain and keep

in good and substantial repair and condition, amongst other things, the main structure of the building and the common parts. The Respondent is under an obligation to keep accounts of the service costs and render service charge statements. There are other obligations but these are the relevant ones.

13. In providing these services, the Respondent is entitled to employ cleaners, to engage the services of the managing agent and to employ surveyors or such other professional persons as may be necessary or desirable for the proper maintenance, safety and administration of the building.
14. The Respondent can recover by way of a service charge the amount he spends in carrying out his obligations under the lease. The Applicants pay 25% of the costs of the services.
15. The machinery for collecting the service charge is as follows. An interim service charge is payable by equal instalments in advance on 1 April and 1 October in each year.
16. The lease contemplates that in each year a final service charge statement will be sent and a balancing exercise carried out so that the appropriate demand can then be made or appropriate credit given.

1 April 2012 to 31 March 2013

17. The service charge certificate for the year 1 April 2012 to 31 March 2013 is at [73] in the trial bundle. The Scott Schedule for this year is at [21-22].
18. Dealing with the charges for this year:
 - (1) Accountancy

We allow Lichfield & Co's fee of £600.00 [82].
 - (2) Cleaning

We allow Alternative Solutions' charges of £320.00.
 - (3) Repairs

We do not allow the claim for general repairs of £1,460.00. We are not persuaded, on the balance of probabilities, that this guttering work with scaffolding was ever done.

(4) Insurance

We allow £1,173.39 for the insurance policy. We do not allow £234.68 for the arrangement fee, which we do not consider reasonable [96].

(5) Management charges

We allow the managing agent's fee of £900.00.

19. The total allowed for this year is, accordingly, £2,993.39.

1 April 2013 to 31 March 2014

20. The service charge certificate for the year 1 April 2013 to 31 March 2014 is at [56] in the trial bundle. The Scott Schedule for this year is at [23-24].

21. Dealing with the charges for this year:

(1) Accountancy

We allow Lichfield & Co's fee of £630.00 [65].

(2) Repairs

We allow the claim for general repairs of £363.00.

(3) Insurance

This is agreed at £1,197.00 [69].

(4) Management charges

This is agreed at £1,500.00.

19. The total allowed for this year is, accordingly, £3,690.00.

1 April 2014 to 31 March 2015

20. The service charge certificate for the year 1 April 2014 to 31 March 2015 is at [32] in the trial bundle. The Scott Schedule for this year is at [25-26].

21. Dealing with the charges for this year:

(1) Accountancy

This is agreed at £630.00 [82].

(2) Cleaning

This is agreed at £480.00.

(3) Repairs

The cost of entry phone and locksmith is agreed at £293.00. Maintenance costs are agreed at £210.00. So the total for repairs is £503.00.

(4) Insurance

This is agreed at £1,472.08.

(5) Management charges

This is agreed at £1,500.00.

22. The total allowed for this year is, accordingly, £4,585.08.

1 April 2015 to 31 March 2016

23. The service charge estimate for the year 1 April 2015 to 31 March 2016 is at [30] in the trial bundle. The Scott Schedule for this year is at [27-28].

24. The estimated charges are agreed at £6,977.00.

25. At the beginning of this decision we have set out what we consider the Applicants are bound to pay under the terms of the lease, which is 25% of the total maintenance expenditure (see the fifth schedule [187-190]). We note that the Respondent is charging the Applicants one third of some of the charges, such as cleaning (for example see [73]). We do not consider that that is justified under the terms of the lease.

26. There are no grounds in our judgment for making an order under section 20C of the Landlord and Tenant Act 1985.

Name: Simon Brilliant

Date: 28 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 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.