



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

Case Reference : **LON/00AZ/LSC/2015/0372**

Property : **3 Dunfield Gardens London SE6
3RN**

Applicant : **Phoenix Community Housing
Association**

Representatives : **Mr S Strelitz of Counsel**

Respondent : **Ms Fauzia Sheikh**

Representative : **Mr S Jones of Counsel**

Type of Application : **Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985 (Section
27A)/Commonhold and Leasehold
Reform Act 2002 (Schedule 11)**

Tribunal Members : **Prof Robert M. Abbey (Solicitor)
Mr Ian Thompson (FRICS)**

**Date and venue of
Hearing** : **14th December 2015 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **4 January 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant all such service charges listed in the claim, (or as may have been varied by agreement between the parties,) save as maybe reduced as mentioned below. Thus, all service charges are approved by the tribunal unless specifically disallowed or reduced as below. For ease of reference please see paragraph 3 of this decision for the explanation of the numbers in square brackets:

Service charges

- [265], £425.08 (Actual day to day service charges 2013/2014) – deduct £17.44 conceded by the applicant [684]
 - [265], £662.46 (Estimated day to day service charges 2014/2015) – deduct £4.36 conceded by the applicant [684]
 - [265], £15,341.70 Major works service charges 2012/2013
2. The file shall be returned to the County Court at Bromley for the determination of the following claims which this tribunal does not have jurisdiction to determine:
 - Court fee and
 - Costs
 3. The reasons for our decisions are set out below. Later, (or earlier), reference in this decision to a number in square brackets ([]) is a reference to the page number of the hearing bundle/file provided to the tribunal for use at the hearing.

The application and procedural background

4. In the early part of 2015 the applicant landlord commenced legal proceedings [1,5,7,10,15,17,21,87] against the respondent as proprietor of a long lease [35] of the subject property, there having been prior proceedings between the parties.
5. The respondent did file a defence [10] which asserted that the Respondent was not liable for the service charges claimed because she says the services had been provided at the property to a very poor standard or not at all. The respondent also maintained that it was not reasonable that she pay for such poor cleaning, redecoration and other works and expenses claimed by the landlord.

6. The applicant's claim concerning the determination of service charges referenced B4QZ384C was transferred to this Tribunal by order of District Judge Brett from the County Court at Bromley. The date of the order [87] was 9 July 2015. The claim made in the County court was for unpaid service charges and the administration costs of their collection. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

1. The applicant was represented at the hearing by Mr S Strelitz of Counsel and the respondent was represented by Mr S Jones also of Counsel.
2. The tribunal had before it an agreed bundle of documents prepared by the applicant. However, additional documents were handed to the tribunal by the respondent before or during the hearing. Whilst these served to assist the respondent, the tribunal felt it was appropriate to admit the additional papers in view of the terms of Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8). In particular the tribunal decided that by admitting the papers/photos they would be dealing with the case fairly and justly by ensuring, so far as practicable, that the parties were able to participate fully in the proceedings. The additional papers/photos also ensured that the tribunal was able to use its special expertise effectively and would avoid delay, so far as compatible with proper consideration of the issues.
3. At the hearing the Tribunal had the benefit of hearing evidence from several witnesses for the applicant. Giving evidence for the applicant was Richard Parker Leasehold Consultation Advisor [679], Jenny Guilfoyle, Project Manager for the applicant [691] and Carl Lynch, Caretaking Manager [693]. The tribunal also had the benefit of hearing evidence from several witnesses for the respondent. She gave evidence on her own behalf [163] but giving evidence in her support was Mark Cooper [290], Enid Joseph [287] and David Carter [282] who all filed witness statements. There were other witness statements from non-attending parties and in these circumstances the tribunal could give such weight to those as may be appropriate for a party not giving oral evidence and this not be tested in cross examination.

The background

4. The property which is the subject of this application is one of ten leasehold units within a block of flats or maisonettes. The respondent occupies flat 3, and this is described in the lease [35] as being a second floor flat/maisonette. It would seem that although there are ten units in this block, historically the applicant has charged on a one twelfth basis for this unit rather than one tenth. When asked why they simply

indicated that this was what their predecessor (Lewisham Council) had done. Clearly this militates in favour of the respondent when service charges are calculated. Each lessee is liable for a due proportion of the total service charge expenditure incurred by the landlord.

5. 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.
6. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
7. The landlord applicant claimed arrears of service charges for 2013/2014 and estimated charges for 2014-2015. The amounts claimed were particularised on the county court claim forms but at the time of the hearing the figures were now agreed at the amounts set out above in paragraph 1 of this decision.
8. The items in dispute at the hearing were identified as being for a whole range of service charge activities including caretaking, repairs and maintenance charges and sweeping and cleaning as well as particular major works. The applicant says these service charges are properly payable and the respondent says they have not been reasonably incurred.

The service charges claimed

9. The evidence submitted for the applicant was by workers used by the applicant who were able to provide detailed breakdowns of what work was done and when. This was true of the annual charges as well as for the major works. They were also able to say that where scaffolding was up for an over-long time in regard to the major works that allowances, (deductions from the service charges), were made in favour of the respondent.
10. The evidence submitted for the respondent did not convince the tribunal that any of the charges were either unreasonable or excessive. Sadly, much of the evidence was either from persons not giving oral evidence or from persons who did not live in the same block as the respondent or who lived some distance from the location of the property. Other evidence given particularly by the respondent was not relevant or sufficient to persuade the tribunal that the charges were unreasonable. In these circumstances, having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.

11. Dealing first with the charge of £425.08 being the actual day to day service charges for 2013/2014 we agree a deduction of £17.44 that was conceded by the applicant [684] because there was no record of cleaning in respect of this charge. Apart from this deduction the tribunal could not find anything in the evidence for the respondent that could in any way amount to a serious challenge to the otherwise comprehensive and detailed evidence submitted for the applicant. Similarly with regard to the charge of £662.46, the estimated day to day service charges for 2014/2015 we also agreed with the deduction of £4.36 conceded by the applicant [684] for the same reasons as set out above. Finally, and regard to the sum of £15,341.70 for the major works service charges 2012/2013 we again were able to approve this sum as charged by the applicant as there was little or no relevant evidence presented by the respondent that might persuade us otherwise. Indeed the evidence presented by the applicant was clear and detailed and showed precisely what was done and what was charged and indeed what was allowed where the applicant felt an allowance was due to the respondent.

Transfer back to the county court

12. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the county court so that these claims may be pursued if the applicant wishes to do so.

Application under s.20C

13. There was an application as to whether costs under section 20C would be considered by the tribunal. Having heard the submissions from the parties and taking into account the determinations set out above the tribunal determines that it is just and equitable in the circumstances not to make an order under section 20C of the 1985 Act. The respondent did make an application for an order that all of the costs incurred by the landlord in connection with these proceedings before the tribunal 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 but the tribunal is of the view that it should not make such an order. The tribunal had in mind that the applicant has been successful in most parts of the disputed areas and as such felt that it was appropriate to take this view of section 20c accordingly.
14. The applicant also made an application for a refund of the fees that had been paid in respect of the application/hearing. Having heard the submissions from the parties and taking into account the determinations set out above the Tribunal does order a refund of fees. The tribunal orders that the application and hearing fees be refunded. The tribunal had in mind that the applicant has been successful in most

parts of the disputed areas and as such felt that it was appropriate for the refunds to be ordered.

Name: Judge Professor Robert
M. Abbey

Date: 4.January.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 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

Administration charges

Part 1 Reasonableness of administration charges

Meaning of “administration charge”

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.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
- (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

- 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.

Liability to pay administration charges

- 5(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 subparagraph (1).