

12286



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

Case Reference : LON/00BK/LSC/2017/0011

Property : Flat 1, 18 Hamilton Gardens,
London NW8 9PU

Applicant : Apsleygrange Limited

Representative : Mr Chris Green instructed by
Chandler Harris Solicitors for the
applicant

Also in attendance : Mr A Akinosi – Associate Director
of Fifield Glynn (Managing Agents)

Respondent : Mujahid Malik

Representative : In person

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

Tribunal Members : Judge Daley
Mr J Barlow FRICS

**Date and venue of
Hearing** : 01 June 2017 at 10 am 10 Alfred
Place, London WC1E 7LR

Date of Decision : 25 July 2017

DECISION

Decisions of the tribunal

The tribunal makes the following determinations:-

(1) That the insurance monies payable to Ms R Grewal by way of reimbursement in the sum of £127.40 is not payable as a service charge

(2) That for the year 2015 :the following items only are payable as service charges (a) the insurance (b) the managing agents fees (c) that the cost of repairs carried out are payable on proof that costs have been incurred by the provision of an invoices. (d) the bank charges on proof that costs have been incurred

(3) That for the year 2016: all of the sums claimed save for the electricity is reasonable and payable.

(4)That the sums claimed for administration charges are payable in accordance with 2(d) of the lease.

(5) That no order be granted under section 20c

The application

1. On 20 December 2016, this matter was transferred from the Central London County Court by order of DJ Walder, for a determination of the reasonableness and payability of the service charges in the sum of £2,534.82. Directions were given at a case management conference, on 21 February 2017:-

- *The case conference was attended by Chandler Harris on behalf of the Applicant and the respondent. The Respondent stated that his objection to the charges was two-fold one of his objections was that the expenses had been incurred by the other two leaseholders prior to their becoming directors. His second objection was that he did not know what the charges were for.*
- *Directions were given by the Tribunal, and the matter was set down for hearing on 1 June 2017.*

The background

2. The premises which are the subject of this application, is a three storey, Victorian terrace house which have been converted into three flats. The Tribunal was informed that Mr Malik's flat was on the ground floor, Ms Grewal one of the co-directors was on the middle floor and Mr Zing the other co-director was on the top floor.
3. The premises are subject to a lease agreement dated 10 August 1983, which provides that the Applicant will provide services, the costs of which are payable by the leaseholders, (1/3 contribution) as a service charge.
4. Where specific clauses of the lease are referred to, they are set out in the determination.

The hearing

5. At the hearing the Applicant was represented by Mr Chris Green and the Respondent represented himself.
6. The service charges in issue were set out in the Applicant's Statement of Case, the Applicant stated:- The Respondent is the long leaseholder of Flat 1 and has been since 2002. It is held by him, subject to compliance with a lease dated the 10 August 1983...The Respondents covenants are set out in Clause 2. By the same and as set out in clause 3, the Respondent covenanted to contribute and pay without deduction one third of the costs and expenses... in The Fourth Schedule, save for the insurance, which was covered by clause 1. The Applicant originally sought to recover in the County Court the sum of £1868.75 and copies of the six demands that make up that sum are in the bundle...County Court proceedings were issued in September 2016 for £1868.75 plus interest and costs... On the 5 October 2016 a default judgment was entered against the Respondent for a total of £2753.70... By an application dated 15 October the Respondent applied to set aside the default judgment...At the hearing on 20 December 2016, the Respondent admitted that he had failed to notify either the Applicant or their managing agent of his new address. The court took the view that the claim ought to be transferred to the Property Chamber. The Tribunal was informed that the first issue concerned an insurance payment of £127.40 which was repayable to Ms Grewal.
7. The Tribunal was informed that there was a leak from Ms Grewal's flat into the respondent's premises in November 2014. Mr Malik commenced a repair at the property when a further leak occurred. On 19 November Mr Malik informed Ms Grewal that he would send her an invoice for the 14 November works, and would also send a further invoice for the additional work caused by the second leak. Ms Grewal

notified him that she had remedied the leak and intended to claim on the building insurance. In due course, the respondent sent her an invoice in the sum of £350.00, which was referred to, as “the invoice for damage to my flat.” No further invoice in respect of any further work was sent by the respondent.

8. The invoice was forwarded to the insurance company. On 24 February the insurance company wrote to Miss Grewal copying in the respondent to confirm that they were ready to make payment of the claim. In the Applicant’s statement it stated that on 28 February Miss Grewal asked the insurance company to make the cheque payable to him, and she also asked for a breakdown of the payment.
9. The Tribunal was also referred to emails sent by Ms Grewal on 20/4/15 to Lansdown Insurance Brokers. In reply Mr Alec Lloyd, claims assistant, confirmed that a cheque for £477.40 was sent to Mr Malik on 15/03/15. This information was also included in the claims history set out in the insurance company’s renewal invitation.
10. In reply Mr Malik denied receiving the cheque, he stated that he did not see why the cheque had been made payable to him. He was asked why he had not informed Ms Grewal that he had not received the cheque when she wrote to him about it, he stated that he had stopped responding to her email correspondence as she kept writing to him, and because of “ the sheer volume of emails”; he had not responded.
11. He stated that the applicant had had adequate time to check whether the cheque had been cleared. It was also not clear which address the cheque had been sent to. As a secondary point he also relied upon the fact that this matter had been dealt with on a leaseholder to leaseholder basis and in his view could not reasonably form part of the service charges.

The Decision of the Tribunal

12. The Tribunal having heard the evidence on this issue are not satisfied that the claim is a service charge item within the meaning of section 18 of the Landlord and Tenant Act 1985. The Tribunal accepts that this sum is a debt which upon proof that the cheque was encashed may be recoverable. However, the Tribunal considers that this claim falls outside of its jurisdiction as the sum was not incurred as a service charge item, rather it was part of a claim for damage to the property which was payable by the insurance. There was no onus on the Applicant to carry out the works that were needed due to the water penetration as such works were not covered under the provision of the lease.

13. The Tribunal also notes that when the claim was made, Ms Grewal was acting in her capacity as fellow leaseholder, accordingly, the sum is not payable by reference to any term of the lease, and is not payable as a service charge.
14. The next item was for the quarterly service charge payable in the sum of £439.17 for the period 24.6.15- 28.9.15
15. The Applicant in their statement of case stated that “ It appears to be Respondent’s case that he believes that he should only be paying for actual costs incurred in running the building because that is how the costs were shared prior to Fifield Glyn’s appointment, as Managing Agents. The Respondent appears not to appreciate that the lessee’s pay an estimated amount, averaged to four equal quarterly service charge invoices, in advance of costs being incurred, and that any funds not spent are retained against possible future expenditure. This is provided for in the lease.
16. The Tribunal was referred to a budget in the sum of £2635.00 for 2015. The budget included sums for; cleaning, health and safety assessments, electricity, insurance and managing agent’s fees.
17. Mr Malik in his reply stated that the service charge claim related to service charges for a period when the managing agents were not yet appointed and as such were not entitled to their fees. He also stated that he was the sole director of the applicant company until 27 December 2015. In respect of the expenditure, he stated that the only costs incurred up until that time was £450.00 for insurance, and that as such his share was £75.00 for the three month period.
18. The Tribunal was informed that the managing agents had intended to carry out health and safety assessments and that they had commissioned repairs to unblock the drains and carry out repairs to the intercom.
19. The Tribunal also noted that insurance was placed in October 2015, prior to the managing agents taking over management of the property. The managing agent’s fees involved work of insuring the building, arranging for services within the building, the preparing of a budget. Collection of rent, chasing arrears and managing health and safety contracts. The Applicant relied upon clauses 3 (1) and 3(2) of the lease.
20. Mr Malik did not accept that managing agent’s fees were payable as he stated that he had been managing the property prior to Fifield Glyn taking over the management and if any fee was payable then it should be to him as manager. He stated that there was less than 10 metres of stairs at the property therefore there was no need for a cleaner

21. The Tribunal noted that there appeared to be a period when both Mr Malik's insurance and that obtained by the managing agents appeared to be running in parallel. However, it was accepted that the insurance obtained by Mr Malik had been cancelled.

The Decision of the Tribunal

22. The Tribunal noted that Mr Malik had undertaken management in his role as managing director of the company, and that as such his priority had been to keep the costs down.
23. Although he had provided ad hoc management, it could not be said that he was a professional manager of the property. The majority of the leaseholders had appointed Fifield Glyn. However their appointment had not commenced until 29 December 2015, although they had placed insurance prior to their appointment. The Tribunal noted that given the date of the appointment very little costs were incurred in managing the building. Accordingly for items such as health and safety and cleaning no service charges are payable. The Tribunal noted that insurance costs were incurred, this item is payable by the respondent.
24. The Tribunal also determine that on proof of expenditure the costs of any repairs are payable by the respondent, the Tribunal also determines that the pro rata costs of the applicant's fees are also payable by the respondent.
25. The Tribunal were referred to the budget for 2016 the total amount was in the sum of £3,487.00 amongst the items budgeted for were £500.00 general external repairs, £300.00 for the cleaning contract. There was also provision for health and safety assessments and an asbestos survey at £180 each, £400.00 for internal repairs and £150.00 for electricity. Additionally, there were costs shown for bank charges and 'out of hours' emergency cover as well as sums for Management fees and insurance.
26. Mr Green stated that the Budget set out the estimated expenditure that the managing agents forecast that they intended to spend on the property, they had had difficulties as Mr Malik had not contributed therefore the landlord was not able to carry out all of the planned work.
27. In reply Mr Malik in his Statement of Case stated that he disputed the electricity in the sum of £150.00. He stated that electricity for the common parts had been provided by connection through his flat and as such the costs of the electricity were paid for by his tenant. He stated that his tenant had a discount applied to the rent to reflect this.
28. The sums budgeted for general repairs and internal repairs totalled £927.00, Mr Malik stated that up until 2015 there had been zero

expenditure in respect of the building maintenance, given this, he did not accept that the costs of repairs was likely to be in the range of £927.00. He stated that no building reports/surveys had been undertaken. He also stated that the bank charges were not payable by reference to the lease.

29. In respect of the emergency out of hours cover, Mr Malik considered that this should be included within the managing agent's fees, so accordingly nothing extra should be paid for this service.
30. In reply, Mr Green stated that it was the applicant's intention to have a separate landlord's supply at the premises, as the Applicant had to look ahead to a time when Mr Malik might not own the premises. Accordingly they had budgeted for this to be paid separately. He also explained that the out of cover emergency fee was to enable the leaseholders to have access to emergency repairs should this be necessary. In respect of the bank charge this was for setting up a separate account to manage the service charge income.
31. In the applicant's statement of case, they set out that -: *"...As a result of his refusal to pay his service charges or to communicate with the managing agent or other lessees, Mr Xing and Miss Grewal have wholly funded the maintenance and management of the building for the last two years. They have covered the cost of the managing agent's fees, the building insurance premiums, the unblocking of the common drains on more than one occasion, repairs to the intercom system, etc. Moreover, Fifield Glyn has been unable to carry out full management services due to the limited funds available. The interior and exterior common areas have not been properly cleaned for three years, apart from the occasional localised clean carried out personally by Mr Xing outside the top floor apartment. Moreover, the interior common parts have not been refurbished since April 1998(19 years) and the exterior of the building since 2005... this is apparent from sight of the building..."*

The Decision of the Tribunal

32. The Tribunal having considered clause 3 of the lease which states:- The Lessee hereby covenants with the Lessor and the other lessees to contribute and pay one third part of the costs expenses outgoings and matters mentioned in part 1 of the Fourth Schedule hereto...(ii) The contributions under paragraph (1) of this clause for each year shall be estimated by the Lessor or their managing agents (whose decision shall be final) as soon as practicable after the beginning of the year and the Lessee shall pay the estimated contribution by 12 instalments in advance on the first day of each month of that year..."
33. The Tribunal consider that the wording of the lease gives the applicant through their managing agent's a wide discretion to set a budget, for

the service charges. The Tribunal having considered the items claimed and having listened to the respondent's objections find that on a balance of probabilities the sums claimed are reasonable and payable, save for the costs of electricity which is considered below.

34. The Tribunal notes that the respondent is unhappy to pay the sums due as he relies on the fact that the work has not been undertaken by the applicant. This is something of a circular argument, as it is clear from the representations of the applicant, that there is a difficulty in undertaking work and providing essential services at the premises whilst funds are outstanding from the respondent.
35. The Tribunal notes that in the event of underspend against the budget, the leaseholder is by virtue of the provisions in clause 3 (iii) able to receive a credit in the event of over payment.
36. The Tribunal notes that although the estimated budget was provided for a quarterly amount, by virtue of the provisions in the lease, the sums are payable monthly.
37. The Tribunal does not however accept that the sums claimed for the electricity are reasonable and payable, as the landlord does not have a separate supply and the costs of the electricity is currently paid by Mr Malik's tenant. The Tribunal notes that Mr Malik indicated that he should receive a contribution for this sum. Any such sum would need to be properly quantified, and would doubtlessly be caught by section 20B of the Landlord and Tenant Act 1985 were the costs were incurred over 18 months before the demands were served.
38. The Tribunal accordingly finds that nothing is payable to the landlord on account of electricity, it would however urge the parties to come to some arrangement about discharging the costs of the electricity in the future.
39. The Applicant also claimed for costs incurred prior to the hearing by way of administration charges.
40. In his statement of case Mr Malik asked for the Applicant's claim for legal costs to be struck out on the grounds that the figures for the service charges had not been properly specified. He stated that although the sum of £624.00 was given there was no proper breakdown of how the costs had been incurred. Mr Malik had set this out in a letter dated 18 March 2017.
41. Mr Green asserted that that would be disproportionate, as the lease provided that the service charge was payable on an estimate and as such there were some sums which were specific such as the insurance and other sums that were payable on the estimated amount.

42. The Applicant in her statement of case in respect of the legal costs, stated-: that the charges of £624.00 were made up of £120.00 plus VAT for the initial letter before action and £400.00 plus VAT in respect of the preparation of the county court. It was stated that the costs were recoverable by clause 2(d) of the lease and that it was intended that recovery of the costs would be pursued in the county court.
43. Mr Malik asked the Tribunal to make an order under section 20C so that none of the costs of this hearing could be passed on as a service charge item. He referred to the fact that the service charges had been claimed in circumstances where they were not due. In particular the landlord had not demanded the service charges on a monthly basis.
44. Mr Green referred to Elysian Fields Management Company and Nixon 2015 UK UT 0427 as authority for the proposition that even though the landlord had not strictly complied with the lease terms, the sums due under the lease were still payable.

Application under s.20C and refund of fees

45. The Tribunal having heard the evidence and listened to the submissions of the party determine that there should be no order under section 20C. The Tribunal has noted that the property is essentially owned by the leaseholders, and that these proceedings have been brought to enable the managing agents to have sufficient funds to enable them to manage the premises. The lease provides that payment shall be made in advance. The Tribunal consider that in the circumstances of this case it is not equitable that an order be made.
46. The Tribunal has noted that the applicant does not seek an order for the recovery of the admin fees in these proceedings and that the costs will be remitted to the county court, accordingly the Tribunal makes no finding in respect of the admin fees.
47. The Tribunal makes no order for the Applicant's fees to be refunded by the Respondent.
48. The Tribunal having made its findings by way of this decision remits this matter to the county court in respect of any further action.

Name: Judge Daley

Date: 25 July 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985

(1) 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 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).

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatious, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

12287



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

Case Reference : **LON/00BG/LDC/2017/0067**

Property : **Flats 1-180 Wilmot Street, Bethnal Green, London E2 0BS**

Applicant : **Waterloo Residents (1-180 Wilmot Street) Ltd, represented by Rendall and Rittner.**

Respondent : **The leaseholders as specified in the schedule submitted by the Applicant.**

Type of Application : **Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**

Tribunal Members : **Judge Richard Percival**

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

Date of Decision : **24 June 2017**

DECISION
