



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

Case reference : **LON/00AE/LCS/2019/0140**

Property : **Flat 25A Heathfield Park, London
NW2 5JE**

Applicant : **Abigail Sarah Moses**

Representative : **Marshall L Levine & Associates
solicitors**

Respondent : **Notting Hill Genesis**

Representative :

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

Tribunal members : **Tribunal Judge Dutton
Mr L Jarero FRICS**

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

Date of decision : **20th May 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £181.77 is the reasonable amount payable by the Applicant in respect of the service charges for the years 2017/18. The tribunal makes no determination in respect of the anticipated expenditure for the year 2018/19 for the reasons set out below.
- (2) 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.
- (3) The tribunal makes an order under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that any costs associated with these proceedings may not be recovered as an administration charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Applicant in respect of the service charge years 2017/18 and the anticipated service charges for 2018/19.
2. The relevant legal provisions are set out in the Appendix to this decision.

The determination

3. The Applicant indicated a willingness for the matter to be determined on the papers submitted. The respondent made no representations on the track to be utilised and did not file any statements in reply to the applicant's statement of case.
4. Before the hearing we were provided with a file of papers which comprised the applicant's statement of case, extracts from the lease of her property, a service charge statement for the year 2017/18 and a copy of the particulars of claim in the applicant's action against the respondent in the County Court at Central London. In addition, we were provided with a copy of the pre-action protocol letter dated 25th March 2019, sent to the respondent and a copy of the respondent's and applicant's registers of title.

The background

5. The property which is the subject of this application is a ground floor flat held under the terms of a lease dated 14th March 2016, the assignment of which to the applicant appears to have taken place on 30th November 2016.
6. Somewhat indistinct photographs of the building were provided with the bundle provided to us. 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. Under the lease of the property there is a requirement for the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

8. We identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2017/18 relating to contributions to the reserve fund and management fees
 - (ii) The challenge to anticipated service charges for 2018/19
9. Having considered all the documents provided, we have made determinations on the various issues as follows.

Actual service charges for the year 2017/18

10. In the bundle provided is a service charge Annual Statement for this year. It shows charges in respect of internal electricity of £40.63, being 33.33% of the total and a contribution to the insurance premium of £66.14. Neither of these items of expenditure appear to be challenged, in either the application or the applicant's statement of case.
11. There is shown a sinking fund opening balance of £150, sinking fund contributions of £150 and interest of £0.75. None of these sums appears to be demanded. The final item of a claim for £150 is in respect of management fees. This appears to be the nub of the applicant's case. She alleges that no maintenance work has been done to the property, which is the reason why she has commenced proceedings in the County Court and that accordingly no management fees are payable.
12. In her statement of case she seeks an order that the service charges demanded for the year 2017/18 are not payable and further that

although not demanded yet, the anticipated service charges for the year 2018/19, the quantum of which is not known to us, is also challenged.

The tribunal's decision

13. We determine that the amount payable in respect of the service charge Annual Account is £181.77, being the amount claimed for the electricity of £40.63, the amount claimed in respect of the insurance of £66.14 and a contribution towards the management fee of £75.

Reasons for the tribunal's decision

14. The applicant's statement of claim seeks to avoid, it would seem, any payment in respect of the actual sums incurred in 2017/18. The service charge Annual Statement appears to indicate that the estimated service charges for the year 2017/18 were £407.76, some £150.99 more than the actual costs. It is not clear whether the applicant has paid the estimated amount or any part thereof.
15. Our finding is that the sums claimed for the internal electricity and the insurance are, in the absence of any evidence to the contrary, reasonable and payable. The reserve fund monies do not seem to have been demanded and we do not know from the papers before us what contributions the applicant may have made. As a matter of comment it would not seem that a request for a payment in the region of £150 each year for the reserve fund is unreasonable, provided the respondent can show a planned maintenance programme indicating what the anticipated expenditure might be.
16. On the question of the management fee, it is clear that some management has been undertaken, hence the insurance and the electricity demand. It would seem that the respondent has been lax in respect of the maintenance of the property, but that will be for the County Court to determine. We find that a fee of £75, being half the sum claimed, would be a reasonable sum to allow the respondent for the management of the property.

Estimated service charge for 2018/19

17. We make no findings in respect of this matter.

The tribunal's decision and reasons

18. It is not possible for us to make a determination in respect of the estimated expenditure for 2018/19 for the simple reason that it would seem no demand has as yet been made and accordingly nothing is payable. In addition, we are given no information as to what the

amount may be, nor for what. In those circumstances we cannot make any finding in respect of this matter.

Application under s.20C and refund of fees

19. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having considered the papers 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 (if any) in connection with the proceedings before the tribunal through the service charge. Likewise, we make an order under the provisions of paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 that any costs incurred by the respondent, if any, shall not be recoverable as an administration charge under the lease.

Andrew Dutton

Name: Tribunal Judge Dutton **Date:** 20th May 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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

Limitation of administration charges: costs of proceedings

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.