



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

Case Reference : **CHI/21UC/LSC/2013/0126**

Property : **Garden Flat 39 Cavendish Place
Eastbourne East Sussex BN21 3HX**

Applicant : **Mr R Longden and Ms M Campbell**

Representative : **Mr R Longden**

Respondent : **Ms F Jabbari and Mr K Jabbari**

Representative : **Ms F Jabbari**

Type of Application : **S27A and s20C Landlord and
Tenant Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr W M S Tildesley OBE
Mr N I Robinson FRICS**

**Date and venue of
Hearing** : **Eastbourne Magistrates Court
30 April 2014**

Date of Decision : **6 May 2014**

DECISION

The Tribunal determines that the Respondent landlord's claims for unpaid services charges for the service charge years 2010-2011, 2011-2012 and 2012-2013 as detailed below are reasonable and substantiated and are payable in full by the Applicant tenant. The Tribunal determines that the estimate of charges for service charge year 2013-2014 is reasonable. The Tribunal makes no order under s20C Landlord and Tenant Act 1985.

REASONS

1 The Respondent is the landlord of the premises known as Garden Flat 39 Cavendish Place Eastbourne East Sussex BN21 3HX (the property) and the Applicant is the tenant of the property.

2 On 5 October 2013 the Applicant filed an application with the Tribunal asking it to determine his liability to pay service charge for the service charge years 2010-11 (part) 2011-12, 2012-13 and the estimates for future years up to 2018.

3 Directions were issued by the Tribunal on 27 November 2013 and 10 January 2014, the latter restricting the Tribunal's consideration of future liability to the current year, 2013-14.

4 A bundle of documents was placed before the Tribunal for its consideration. Page references below are to pages in that bundle. At the request of the Tribunal the Respondent prepared a supplementary bundle during the hearing, page references to that bundle are identified by the prefix 'supp'.

5 There had been a long standing and unresolved difference of opinion between the Applicant and Respondent relating to the method of supply of and charges for lighting the common parts of the building known as 39 Cavendish Place (the building) of which the property forms part. Until February 2014 the electricity for the common parts of the building had been supplied by the meter which also served the property and difficulties had arisen over this matter as a result of which the Applicant had refused to pay his ground rent or service charge. The Applicant brought his application to the Tribunal in the expectation that the Tribunal would resolve this dispute. He now understands that such a matter is not within the jurisdiction of the Tribunal (although it can be dealt with by the County Court) and he also accepted that the Tribunal has no jurisdiction to consider questions relating to ground rent. The Tribunal notes that the electricity supplies for the property and the common parts of the building have now been separated.

6 The Tribunal inspected the property immediately prior to the hearing. Mr Longden, Ms Jabbari and Mr Jabbari were also present. The building is a mid-nineteenth century mid-terrace house spread over three floors plus a separately accessed basement and now divided into four apartments. Apart from a small patio area at the rear, currently belonging to the basement flat, there is no outside space and on street parking is restricted. The exterior of the building is rendered, some parts of which appear to have been repainted recently, other parts needed attention. Replacement double glazed windows had been fitted to all flats. It was not possible to assess the condition of the roof. A bus route serves Cavendish Place which is a mixed area of residential and commercial premises. The building is within a short walk of the sea front and town centre and with local amenities close by. The subject property comprises the basement of the building and is accessed by a narrow stone staircase from street level to its own front door adjacent to which is a windowless underground storage space which houses the gas meters for the property and the building. The property appeared to be in reasonable condition with a living room/kitchen facing the street. Two double bedrooms and a bathroom are situated towards the rear of the property and a small enclosed patio area is accessed through French windows in one of the

bedrooms. The remainder of the building is divided into three flats, one on each floor all sharing the entrance door from the street accessed from a flight of steps at pavement level. The small narrow hallway houses the recently boxed in electricity meters and a notice board; a narrow staircase leading to the first floor from which the upper two flats can be accessed. The top floor flat has exclusive use of the second flight of the staircase which is enclosed behind that flat's front door. The decoration of the carpeted hallway is shabby and uninviting, a recently installed power socket now permits the cleaners to vacuum the carpets. The Tribunal did not inspect the interior of the flats within the building. It was however evident that the Applicant's flat is entirely self-contained and he would not need to enter the main part of the building except to read the meters. Similarly, the tenants of the main part of the building would be unlikely to use the Applicant's exterior staircase unless they needed to read their gas meters or deal with a problem related to the gas supply.

7 The Applicant holds the property under a lease dated 28 July 2006 and made between Brian Noke and Terry Shay for a period of 125 years from 29 September 2005. Under Clause 3 of the lease the Applicant tenant covenants (inter alia) to pay £250 per half year by way of advance service charge with the balance payable on demand with any surplus being credited to a sinking fund. The amount of the advance service charge can be increased by the landlord on giving notice to the tenant. The tenant is responsible for 25% of the total service charge for the building (Recital (o)); the service charge year running from 29 September in one year to the following 28 September (Recital (n)). By Clause 5 and the fifth schedule to the lease the Respondent landlord covenants to repair maintain etc the structure and exterior and interior common parts of the building with the costs of so doing, including the costs of employing third parties such as a managing agent, being reimbursed by the tenants through the payment of the service charge.

8 The parties agreed that as at June 2011 no service charge was outstanding from the Applicant (page 2).

9 The Applicant's case did not identify any specific challenges to the service charges demanded by the Respondent but at the hearing, when asked by the Tribunal to do so, he mentioned the items discussed below.

10 The Applicant objected to the sum of £993 estimated for the repair of TV and satellite dish on the building (page 254) through which he acknowledged he received his television signal. He was reminded that the sum of £993 was only an estimate and that the only sum actually charged to the service charge account was £90 (page 165) which the Tribunal considers to be a reasonable charge for the works carried out.

11 He also raised an objection to electrical repairs (page 107) but accepted the Respondent's explanation that the work had not (contrary to his belief) concerned the basement flat (page 8).

12 The Applicant said that he had only once seen a cleaner at the building and that the cleaners could not carry out their duties because of the absence of a power socket in the common parts. The Respondent agreed that a power outlet had only recently been installed but maintained that she had confirmed both with the managing agents and the cleaning company that the work was being carried out in accordance with the specification on page 41 using a dustpan and brush to clean the carpets. The cleaners' charges which varied between £10 and £12 per month appear to be consistent with the minimal

level of cleaning required by page 41 and the small size of the common parts. The layout of the building is such that the cleaners would not need to go near the Applicant's property to carry out their duties and supports his own assertion that he had only seen them on one occasion.

13 The Applicant also disputed the necessity of an asbestos report saying that the previous owner had commissioned a report himself and that as the flats were newly converted when he moved in the presence of asbestos in the building was unlikely. The Tribunal accepts the Respondent's explanation that no asbestos report had been given to them when they bought the building and that she had been advised by their managing agents that such a report was desirable. The cost of the report was £180 which the Tribunal does not consider unreasonable.

14 The supplementary bundle, prepared by the Respondent at the Tribunal's request, contained copies of all demands and accounts served on the Applicant who acknowledged that he had received all of them. The Tribunal is satisfied that the demands comply with statutory requirements both as to content and time of service and since none of the Applicant's objections have been substantiated declares that they are all payable in full by the Applicant as set out below:

14.1 year ending 28 September 2011: nil (see para 8 above and no evidence of any further demands relating to that year).

14.2 year ending 28 September 2012: £1,325.00 (£662.50 on page supp 7 and further £662.50 from page supp 19).

14.3 year ending 28 September 2013: £250 (page supp 21).

15 This gives a total outstanding and payable by the Applicant of £1575.00

16 The Tribunal considers that the Respondent's estimate for the service charge year 2013-2014 is reasonable (page sup 32) in so far as it includes costings. This does not prevent the Applicant from challenging the actual charges at year's end when balancing accounts are prepared.

17 It would in future be helpful to both parties to have full estimates prepared for anticipated expenditure and professionally prepared accounts at each year's end. An awareness of and compliance with the RICS Codes relating to service charges and the management of property would further the parties' understanding of their rights and obligations to each other.

18 The Applicant stated in closing that he realised he had mistakenly chosen the wrong arena in which to air his grievances about the electricity meters. Both parties were advised to take legal advice about resolving their outstanding differences. The Respondent said that she would welcome an approach by the Applicant and other tenants to manage the building themselves through a Right To Manage application to the Tribunal.

18 The Applicant made an application under s20C Landlord and Tenant Act 1985. The Respondent said she had not used solicitors to help her with this matter and did not intend to put any charges relating to it on to the service charge bill. That being so the Tribunal does not need to make an order under s20C Landlord and Tenant Act 1985.

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.

- (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, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate 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 the appropriate 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 sub-paragraph (1).

Judge F J Silverman as Chairman
Date 6 May 2014

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking



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Eastbourne East Sussex BN21 3HX**

Applicant : **Mr R Longden and Ms M Campbell**

Representative : **Mr R Longden**

Respondent : **Ms F Jabbari and Mr K Jabbari**

Representative : **Ms F Jabbari**

Type of Application : **Application for permission to
appeal**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr W M S Tildesley OBE
Mr N I Robinson FRICS**

Date of consideration : **17 June 2014**

Date of Decision : **17 June 2014**

DECISION OF THE TRIBUNAL

1. The tribunal has considered the respondent's request for permission to appeal dated 30 May 2014 and determines that:
 - (a) it will not review its decision; and
 - (b) permission be refused.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

REASON FOR THE DECISION

3. The original tribunal's decision was based on the evidence before it and the respondent has raised no valid legal arguments in support of the application for permission to appeal. The proposed appeal is based on the respondent's assertion that the Applicant landlord was using their adjacent property for an illegal purpose and also using the respondent's electricity supply to sustain this organised crime. Such matters are not within the Tribunal's jurisdiction and cannot form the basis of an application nor constitute a ground for appeal.

Judge F J Silverman as Chairman
Date 17 June 2014