



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

Case Reference : LON/00BK/LSC/2014/0585

Property : Flat 6, Bedford House, 61 Lisson Street, London NW1 5DD

Applicant : Mintgreen Properties Limited

Representative : Mr S Murch of Counsel

Respondent : Kishore Dherani

Representative : In person

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

Tribunal Members : Judge W Hansen (chairman)
Mr P Roberts DipArch RIBA
Mrs L Hart

Date and venue of Hearing : 20 April 2015 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 5 May 2015

DECISION

Decisions of the Tribunal

- (1) The tribunal determines that the Respondent is liable to pay his share (11.67%) of the following sums for management fees: £3465 for 2012, £3465 for 2013 and £3465 for 2014;
- (2) The tribunal determines that the Respondent is not liable to pay any part of the sum of £908 claimed for legal and professional fees in 2013;
- (3) The tribunal determines that the Respondent is liable to pay his share of the following sums for insurance: £3229.46 for 2012, £2983 for 2013 and £2983 for 2014;
- (4) The tribunal determines that the Respondent is liable to pay his share of the following sums for repairs and maintenance: £481 for 2012, £2979.41 for 2013 and £2392 for 2014;
- (5) The tribunal determines that the Respondent is liable to pay his share of the following sums for cleaning: £480 for 2012, £480 for 2013 and £440 for 2014.
- (6) The tribunal determines that the Respondent is liable to pay his share of the following sums for bank charges: £46 for 2012, £65.51 for 2013 and £22 for 2014.
- (7) The tribunal determines that the Respondent is liable to pay his share of the following sums for accountancy charges: £300 for 2012 but nothing for 2013 or 2014.
- (8) The tribunal determines that the Respondent is liable to pay his share of the following sums for fire safety: £459.60 for 2012.
- (9) The tribunal determines that the Respondent is liable to pay his share of the following sums for miscellaneous items: £4.80 for 2012.
- (10) The tribunal determines that the remainder of the service charges for the period covered by the county court claim which were not disputed and/or are not referred to above are fully payable.
- (11) The tribunal is not satisfied that the Lease permits the recovery of legal costs through the service charge but if it is wrong it considers it just and equitable to make a section 20C costs order in favour of the Respondent.

- (12) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or costs.

The Application

1. The Applicant is the freeholder of 61 Lisson Street, London NW1 (“the Building”). The Building now comprises 10 units (8 flats and 2 maisonettes) and there is a bungalow at the rear. The Respondent is the lessee of Flat 6 (“the Flat”). In or about October 2014 the Applicant commenced proceedings against the Respondent for arrears of service charge of £3,262.10 plus interest and costs. On 11 November 2014 District Judge Silverman transferred the claim to this tribunal. The claim relates to the years 2011/12, 2012/13 and 2013/14. By virtue of the order of the County Court transferring the Applicant's claim for service charges to this Tribunal, the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the reasonableness and payability of certain service charges charged to the Respondent. The relevant legal provisions of the 1985 Act are set out in the Appendix to this decision. There have been at least two previous decisions of this Tribunal involving these parties and the subject property covering earlier years from 2002 up to and including the year 2010/11.
2. The Applicant applied for an adjournment of the hearing on the basis that its proposed witness, one Margaret Taylor, an accountant employed by the landlord’s managing agents, Duncan Phillips Limited, was out of the country, having left on 11 April. It was said that only she would be able to explain the service charge accounts. The Respondent intimated that he was neutral on the application. Having carefully considered the application in the light of the overriding objective in Rule 3 of the 2013 Tribunal Procedure Rules (2013 No. 1169), the Tribunal refused to adjourn the hearing. The date for the hearing had been fixed in December 2014. We were not told when Mrs Taylor had

booked her trip abroad. The Respondent's statement of case had been served on 1 April 2015, 4 days late, but still 10 days before Mrs Taylor's departure, and she had had 5 working days to give instructions on any particular matters raised before her departure. In any event, it was accepted by Counsel for the Applicant that the Respondent's statement of case had not fundamentally or significantly altered the issues for determination. The Tribunal therefore refused the adjournment and proceeded with the hearing.

The Issues

3. The Respondent's lease ("the Lease") is dated 21 August 1987. It has since been varied so that the tenant's percentage share of the relevant expenditure on services is now 11.67%. The service charge year runs from 1 July to 30 June. The service charge accounts or financial statements for the years ended 30 June 2012, 30 June 2013 and 30 June 2014 were in the bundle at pages 86-88. The issues for each of the three years in question related to the costs associated with the following items: management fees, legal and professional fees, insurance, repairs and maintenance, cleaning, bank charges, accountancy fees, fire safety and miscellaneous. The approach the Tribunal took was partly chronological and partly thematic.

Management Fees

4. The figure in the accounts for the year ended 30 June 2012 was £3,811, rising to £3,638 in 2013 and £4184 in 2014. The Respondent contended for a figure of between £150 and £250+VAT per unit on the basis that the management provided was minimal, the standard of the service was poor and getting worse and there had been poor communication and lots of errors. He did not provide any alternative quotations for management fees. The Tribunal considered that a reasonable sum would be £262.50+VAT per unit for each of the relevant years. This equates to £315 including VAT which amounts to £3,465 for 11 units;

this figure reflects the charge of £3,465 as set out in the budget for the year ended 2012. We could see no justification for the significant increase in these fees over the period. The service level had not improved. The service provided by the agents was not extensive and was in fact relatively modest. Whilst accepting that they had provided a reasonable level of service, attending to various communal issues (e.g. repairs, heating and lighting, entry-phone etc.), routine visits, inspection of works above a certain level before payment of the relevant invoice, processing and paying bills and so on, there was no lift, insurance was arranged directly by the landlord and there was no evidence to justify the increases in management fees year on year. The Tribunal therefore determines that management fees for the years 2012, 2013 and 2014 should be £262.50+VAT per unit = £3,465 per year.

Legal and Professional Fees

5. The sum of £908 was claimed for 2013 in circumstances which were barely explained save for the reference to an internal document at page 607 which showed that this sum was paid out to JB Leitch (the Applicant's solicitors). The claim was not conceded by the Applicant but it was (sensibly) not seriously pursued given the absence of any explanation as to what it related to. This sum is not payable. There were no similar claims for 2012 or 2014.

Insurance

6. The sums claimed were as follows: £4021 for 2012, £2983 for 2013 and £2983 for 2014. The Respondent challenged the quantum of these charges on the basis that the Applicant had over-insured and not properly tested the market before placing the insurance. The Tribunal noted that the documentary evidence for 2012 suggested the premium was £3229.46 (page 105), not £4021, and that we therefore proposed to allow this item only at this lower figure. On that basis the Respondent

did not challenge that item. He did however maintain the challenge for 2013 and 2014. As to the alleged over-insurance, the Respondent pointed to a report from Barrett Corp Harrington (at page 267) which estimated a reinstatement cost of £1.975m, whereas the “*Buildings Sum Insured*” was £2.25m “(including 50% inflation)” (page 106). The Summary of Cover document showed that the “*Buildings Declared Value*” was in fact £1.5m but that a margin had been built in to allow for inflation. In the circumstances the Tribunal does not consider the property to be over-insured. In any event, there was no evidence to indicate that the premium would have been lower if insured for the reinstatement cost and there was no other evidence of comparable insurance quotations to assist us. As to the allegation of not testing the market, we were told that the landlord engaged brokers, Bluefin Insurance Services Limited, and that they tested the market before the insurance was placed. We noted that the insurer had changed from 2012 (Allianz) to 2013 (Mitsui) and that the premium had reduced which was consistent with testing the market. In the circumstances, we allow £2983 for insurance for 2013 and 2014.

Repairs and Maintenance

7. The sums claimed were as follows: £481 for 2012, £5220 for 2013 and £3036 for 2014. There was no dispute about the figure of £481. As to 2013, the Respondent complained that he could not reconcile this figure with the invoices provided and that many of the items related to repairs which were, or should have been, the responsibility of the individual lessee, rather than a matter for the service charge. As to 2013, the total of the relevant invoices is £3424.41, not £5220. Furthermore, we disallow the sums claimed at pages 676 (£75), 663 (£95), 662 (£175) in their entirety on the basis that these were matters for the individual lessee and disallow £100.00 from the invoice at page 660 on the basis that part of that item was the lessee’s responsibility. Accordingly, the Tribunal determines that a reasonable sum for repairs and maintenance for 2013 was £3424.41 less £445 = £2979.41. For

2014, we noted that the invoices amounted to more than the sum shown in the accounts but we consider that we must take the sum shown in the accounts as our starting point. We considered that all the items for 2014 were reasonable save that £644 was deductible from the item at page 718 (£744) because that had apparently been the subject of a successful insurance claim (page 274). The difference between £744 and £644 relates to the excess which was payable. We therefore allow $£3036 - £644 = £2392$ for 2014.

Cleaning

8. The sums claimed were as follows: £670 for 2012, £480 for 2013 and £440 for 2014. There was no dispute about 2013 and 2014. Monthly cleaning had been arranged by the tenants at the rate of £40 per month. In 2012 apparently the cleaners undertook more than monthly cleaning on a number of occasions. However, we were not aware of any justification for this departure from the normal rota. Accordingly, we reduce this item from £670 to £480 for 2012.

Bank Charges

9. The sums claimed were as follows: £46 for 2012, £105 for 2013 and £22 for 2014. There was no dispute about 2012 or 2014. For 2013 we reduced this item to £65.51 based on the documentary evidence (i.e. the bank statements) before us.

Accountancy charges

10. The sums claimed were as follows: £300 for 2012, £760 for 2013 and £760 for 2014. There was no documentary evidence to substantiate any of these charges save for one invoice (page 670) which supported a charge of £300 for the preparation of accounts for 2012. The Respondent said the amount would not have been unreasonable if the work had been done to a satisfactory standard and contended that it had not been. The Tribunal are not accountants. The work had been

done. We were satisfied that it was of sufficient standard to justify this charge. We therefore allow £300 for 2012 but nothing for 2013 or 2014.

Fire safety

11. The sums claimed were as follows: £518 for 2012, nothing for subsequent years. In fact, the evidence supports a figure of £459.60. The Respondent initially suggested that there was no report but there was a detailed Fire Risk Assessment report prepared by Davenheath-OTS (page 328). Ultimately there was no dispute and we allow £459.60 for this item.

Miscellaneous

12. The sums claimed were as follows: £265 for 2012, nothing for subsequent years. The only documentary evidence to support any claim for miscellaneous is a document at page 683 which supports a claim for £4.80 which we allow but no more.

Costs

13. At the conclusion of the hearing the Respondent applied for an order under section 20C of the 1985 Act that the Applicant should not be entitled to add the costs incurred in connection with these proceedings to his service charge. He clarified that he was making such application only on his own behalf, not on behalf of the other tenants. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). The Tribunal must also consider the overall financial consequences of any order it may make: *Conway v. Jam Factory Freehold Ltd* [2013] UKUT 0592.

14. We start by considering the terms of the Lease because the question of discretion only arises if the Applicant is, in principle, entitled to recover legal costs via the service charge. There must be a clear and unambiguous provision to this effect in the Lease. Having regard to the terms of the Lease, in particular clause 5(1)(e) at page 886, the Tribunal is not satisfied that the Applicant is so entitled. However, if we are wrong, we consider that it would be just and equitable to make a section 20C order in favour of the Respondent. The Respondent has succeeded to a considerable extent. The claims have been considerably reduced, in a number of cases because there is simply no evidence to support them. The Respondent's position has been substantially vindicated by our findings. We also consider that the Applicant has been unwilling or unable to provide proper information about the service costs promptly and that this has constrained the Respondent to defend the claim and bring the matter before the Tribunal. Having considered all the relevant circumstances, the Tribunal considers that it would be just and equitable to make a section 20C order. However, for the reasons set out above, the issue does not arise. No other applications or issues relating to costs were raised by either party at the hearing. We therefore proceed on the basis that the claim made by the Applicant in its Particulars of Claim for costs under the Lease is a matter for the County Court or another Tribunal in due course, in the event that that claim is quantified and pursued and then challenged by the Respondent: see e.g. *Barrett v. Robinson* [2014] UKUT 0322.
15. We would hope that the parties should now be in a position to resolve this long running dispute about service charges based on the Tribunal's findings as to what is and is not payable, credit of course being given for the sums already paid by the Respondent.

Name: Judge W Hansen

Date: 5 May 2015

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.