

10389



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

**Case Reference** : **LON/00AF/LSC/2014/0031**

**Property** : **Flat 2 Ravensbourne Lodge, 4  
Highland Road, Bromley BR1 4AD**

**Applicant** : **Miss D V Forbes**

**Representative** : **In person**

**Respondent** : **4 Highland Road (Freehold)  
Limited**

**Representative** : **Mr J Alvi Company Secretary and  
Mr M Manji Director both of the  
Respondent**

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

**Tribunal Members** : **Tribunal Judge Dutton  
Mr T N Johnson FRICS  
Mr O N Miller BSc**

**Date and venue of  
Hearing** : **30th October 2014 at 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **3rd November 2014**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal determines that the sum of £1,749.17 is payable by the Applicant in respect of the service charges for the period 3rd September 2013 to December 2014. This sum is made up of the estimated sums claimed as interim payments totalling £1,603.25, the contribution to the insurance for the period 3.9.13 to 9.3.14 agreed at £71.32, the accountancy charge of £72 and finally the annual return fee of £2.60. The total sum is payable by two instalments, of £874.58 and £874.59 respectively, the first to be paid on or before 30th November 2014 and the second instalment on or before 31st December 2014.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) 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

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years from 1st January 2008 through to 31st December 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Alvi, the Company Secretary and Mr Manji a Director
4. Immediately prior to the hearing the Applicant handed in a bundle of documents, which included the Directions issued by the Tribunal on 30th July 2014, a personal statement and other relevant documents, in particular a statement of account and a copy of the estimated budget .
5. Although the Directions were perfectly clear in what was required of the parties, and although the Respondent had provided the Applicant with the documents she requested, the Applicant had woefully failed to comply with her obligations. However, to their credit Mr Avil and Mr Manji told us that they were prepared to proceed with the hearing and

did not require time to consider the bundle, which in truth was not extensive

### **The background**

6. The property, which is the subject of this application, is a ground floor flat in a building comprising 5 flats. On 3rd September 2013 the Respondent acquired the freehold of the building. One of the flats (no. 3) was owned by First Buckingham Investments Limited (FBIL), a company controlled by Mr Avil and Mr Manji. They, through this company were the force behind the enfranchisement and indeed provided the funds to complete the purchase at a price of £22,268. It appears that the other four leaseholders, who acquired 'B' shares in the Respondent, were to contribute to the purchase price when funds allowed. At the date of the hearing only the present owner of flat 3, who bought from FBIL, had made such a contribution. To evidence the loan of the funds by FBIL to the Respondent a loan agreement was put in place, somewhat after the event on 22nd April 2014. This history is relevant when considering the period for which service charges can be claimed and for considering demands for loan interest which were disputed by the Applicant.
7. It is also relevant to record that the original freeholder, Impy Limited, appeared to have lost interest in the building shortly after the last lease was granted. This lack of interest on the part of the freeholder resulted in FBIL arranging insurance for the building from at least March 2009 to date.
8. 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.
9. The Applicant 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. The terms of the lease were not in dispute.

### **The issues**

10. The issues to be determined are clearly set out in the Directions issued on 30th July 2014. They are
  - (i) The payability and/or reasonableness of service charges for the following matters
    - An advance service charge demand of £1,603.25

- Building insurance for the period 10.3.09 to 9.3.15 as the insurance for the year ending December 2014 in the amount of £146.80 is included in the estimated charge
  - Communal electricity for the period 1.1.08 to 31.12.13 and for the year ending December 2014.
  - Loan interest in respect of the monies advanced by FBIL to acquire the freehold, which totals £24,735.69
  - Accountancy fees
  - Annual return fee
  - Whether section 20B applies
  - Whether an order under section 20C should be made and
  - Whether there should be reimbursement to the Applicant of the fees she paid to the Tribunal
- (ii) Ground rent appears on the demand produced but the Applicant confirmed she accepted liability and would discharge any outstanding amount by year end. This element is not within our jurisdiction but we record the agreement by the Applicant to pay the sums due.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, we have made determinations on the various issues as follows.

**Loan interest**

12. This arises from the loan entered into by the Respondent with FBIL to acquire the freehold. It was accepted by Mr Avil and Mr Manji that this was not a service charge. There appears to be no contractual relationship between the Applicant and Respondent which would allow the recovery of these amounts. They appear on the Outstanding Balance Reminder at page 53 of the bundle for the period 24.7.13 to 31.12.13 of £204.12, for the next six months the sum of £231.38 is claimed and for the period 1.7.14 to 31.12.14 a further claim in the sum of £231.38 is made.

### **The tribunal's decision and reasons**

13. We determine that the three amounts are not recoverable from the Applicant. They do not fall within the definition of a service charge under section 18 of the Act and were incurred solely in connection with the purchase of the freehold. It seems to us that the Respondent is entitled to use the ground rent to discharge the interest payments but cannot, on the face of the evidence before us, recover these sums as a service charge from the leaseholders.

### **Building Insurance**

14. The Applicant accepted that insurance for the building had been placed by FBIL and that the quantum of the premiums was not in dispute. What was in dispute was the Applicant's obligation to make the payment to FBIL. The lease provides for the Landlord to insure. She accepted that as from 3.9.13 the Respondent was fulfilling that role, having acquired the freehold and that she would pay her share of the premium from that date. However, FBIL was never the landlord and was not entitled to demand that she pay any contribution to the insurance, notwithstanding that she had benefitted from same. In her defence she said that she had paid for landscaping/gardening from her own pocket, for some time.

### **The tribunal's decision and reasons**

15. We determine that the amount payable in respect of the building insurance for the period 3.9.13 to 9.3.14 is agreed at £71.32. The Applicant confirmed that she would pay the insurance going forward and within the estimated demand for 2014 is a figure of £146.80, which she did not dispute.
16. The Applicant's argument is unattractive but we fear is legally correct. Her contract is with the landlord to pay for the insurance of the building. FBIL undertook this role due to the landlord's absence without, it seems, getting any agreement from the other leaseholders. We did see an email from the Applicant, which she did not produce, notwithstanding that she produced other emails made the same day, in which she appears to accept liability for the insurance from March 2009 to March 2013, in the sum of £547. However, that would seem to be a dispute for the Courts, not for this Tribunal.

### **Communal electricity**

17. This was something of a red herring. It seems that there is a meter which governs the supply of electricity to the common parts but for which a bill has never been rendered by the provider. The Respondent sought to build up a fund to cover the position as the managing agents

had been instructed to resolve this issue and it was accepted that a demand for the electricity could reasonably be expected in due course. However, at the time of the hearing no claim for electricity had been made by the provider and although it seemed good practice to get funds in place the Applicant was not prepared to make a payment of £180, as demanded. It was not pursued by the Respondent and the Applicant agreed that the estimated demand of £30 for this head of expense was reasonable.

### **The tribunal's decision and reasons**

18. As the costs of the communal electricity have, it would seem, yet to be incurred, in that no bill has been rendered the Applicant will not, in all probability be entitled to rely on the provisions of section 20B of the Act. Building a fund to cover this expense seems sensible but the Respondent accepted that there was no compunction on the part of the Applicant to pay the sum of £180 and therefore withdrew the demand for that sum.

### **Advance Service Charge**

19. The Applicant withdrew her complaint in respect of the demand for interim payments based on the Estimated Service Charge Expenditure list dated 10th June 2014 in the sum of £1,603.25.

### **Accountancy and annual return fee**

20. The Applicant withdrew her challenge to these two items, although indicated that she might review the annual return charge for the following year if it was renewed. She accepted that the sum involved was small and that she was a member of the Respondent company. The accountancy charge was accepted as being payable under the terms of her lease.

### **Costs and fees**

21. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless 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 in connection with the proceedings before the Tribunal through the service charge.
22. The Applicant confirmed she was not seeking reimbursement of the fees she paid to the Tribunal.

**Name:** Tribunal Judge  
Andrew Dutton

**Date:** 3rd November 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **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 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 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.