

10446



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

Case Reference : **LON/00BE/LSC/2014/0230**

Property : **107 Taplow House, Thurlow Street,
London, SE17 2UJ**

Applicant : **Mr K Agbueze**

Representative : **In person**

Respondent : **London Borough of Southwark**

Representative : **Ms A Mills, Enforcement Officer**

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

Tribunal Members : **Judge I Mohabir
Mr M C Taylor FRICS
Mr L G Packer**

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

Date of Decision : **27 November 2014**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of his liability to pay service charges for the years ended 2010, 2013 and 2014.

2. The Applicant is the lessee of the property known as 107 Taplow House, Thurlow Street, London, SE17 2UJ pursuant to a lease dated 25 June 2007 granted to him by the Respondent for a term of 125 years from that date (“the lease”). The Applicant does not dispute his contractual liability to pay the service charges in issue and it is, therefore, not necessary to set out the relevant lease terms that give rise to that liability.

3. However, it is important to note that prior to the lease being granted to him, the Applicant was served with a notice by the Respondent dated 14 November 2005 pursuant to section 15B of Schedule 6 of the Housing Act 1985 advising him of his potential estimated service charge contribution in relation to various proposed works to the property in the sum of £16,030. The cost of some of those proposed works fall within the scope of this application.

The Issues

4. At the hearing, the parties agreed and confirmed that the following service charge costs fell to be determined by the Tribunal:

2010

- (a) the actual cost of major external refurbishment in the sum of £1,398.24.

2013

- (b) the estimated costs of major lift works in the sum of £922.78.

- (c) the Applicant agreed that the remaining balance of the annual service charge in the sum of £390.38 was payable by him.
- (d) the estimated costs of major electrical works in the sum of £998.75.

2014

- (e) the estimated costs of major mains replacement in the sum of £1524.64. It should be noted that the Respondent had not demanded any service charge contribution regarding the works relating to the “warm and dry” package and as such the Tribunal ruled that it could not make any determination in relation to this matter in this application.
5. The Applicant did not challenge the validity of the section 20 statutory consultation carried out by the Respondent in relation to each of the major works contracts set out above. It should be noted that the Applicant did not respond to any of the section 20 notices served by the Respondent. Each of the issues are dealt with in turn below.

Relevant Law

6. This is set out in the Appendix annexed hereto.

Decision

7. The hearing in this case took place on 30 September 2014. The Applicant appeared in person. The Respondent was represented by Ms Mills who is an Enforcement Officer.

2010

Major External Refurbishment

8. It was common ground that, as a consequence of a feasibility report¹ carried out by the Respondent in 2009, major works were undertaken to the roof, external and communal decorations, concrete repairs, balcony; and general repairs were carried out to the building.

9. The Applicant said he did not challenge the cost of the major works as being unreasonable. However, submitted that the work carried out had not been reasonably incurred because he believed that “other works” required greater priority.

10. The Tribunal did not accept the Applicant’s submission. He did not particularise what other works required greater priority at the time and the reasons why. Moreover, there was no evidence to support his submission.

11. The Tribunal was satisfied that the Respondent’s feasibility report properly identified the scope of the major works and it was entitled to act on the recommendations in the report to comply with its repairing obligations under the lease. The Tribunal, therefore, found that the major external refurbishment works had been reasonably incurred. Indeed, in an earlier decision dated 12 July 2013 (“the earlier Tribunal decision”), another Tribunal reached the same conclusion on the same issue in relation to the then (higher) estimated cost. This determination relates to the (lower) actual cost of the works. Accordingly, the sum of £1,398.24 is payable by the Applicant.

¹ see page 86 of the bundle

2013

Major Lift Works

12. The Applicant accepted that this work needed to be carried out. His complaint was that the estimated cost of the work was excessive and, therefore, not reasonable. He asserted that the work should have been carried out long before it had in fact been carried out by the Respondent. Consequently, as a result of this historic neglect, the eventual cost was higher than it would have otherwise been.
13. Again, save for the Applicant's assertion, he had adduced no evidence to demonstrate historic neglect on the part of the Respondent and how the cost of major lift works had in fact increased as a result of this neglect.
14. The Tribunal heard and accepted the evidence given on behalf of the Respondent as to the how the scope of the works had been identified, the statutory consultation undertaken, and that the works had been carried out under a qualified long-term agreement with the contractor.
15. The Tribunal had little difficulty in finding that the estimated costs of the major lift works are reasonable. The earlier Tribunal decision also reached the same conclusion in relation to the same works when it had been proposed in earlier years². Accordingly, the Tribunal concluded that the service charge contribution of £922.78 is payable by the Applicant.

Major Electrical Works

16. The Applicant accepted that all of the specified works were reasonably incurred save for the estate lighting. He submitted that this was simply not needed.

² see page 51 of the bundle at paras 10 and 11

17. The difficulty again faced by the Tribunal was that the Applicant did not have any evidence to support his submission as to the necessity for the estate lighting. The Respondent's report³ clearly identified the requirement to install estate lighting, as part of the overall upgrade of the ageing infrastructure on the estate. Upon acting on this advice, the Respondent cannot be criticised for doing so.

18. Accordingly, the Tribunal found that the cost attributable to the estate lighting works had been reasonably incurred and the Applicant was liable to pay the service charge contribution of £922.78 for the major electrical works contract as a whole.

2014

Mains Replacement

19. These works concerned the replacement of the underground primary and secondary pipe work for the heating system in the Applicant's block of flats.

20. The Applicant accepted that the works were required, but the estimated cost was excessive and, therefore, unreasonable. His argument was based on the fact that the Respondent had served a demolition notice in relation to his block of flats proposed for 2019 and it was not necessary to spend this amount of money given the prospect of demolition of the building in the foreseeable future. The Respondent also argued that the only people who would derive and benefit would be the "rich people" in the opposite block. As he derived no benefit, he should not have to pay any of these costs.

21. Again, there was no evidence to support the arguments advanced by the Applicant that the estimated cost of the work was unreasonable. The

³ at page 335 of the bundle

Tribunal asked Ms Mills to respond to the Applicant's contention that the works were disproportionate, given the short remaining life of the estate. She told the Tribunal that the specification of the works took into account the estate's limited life, and were no more than needed to keep the estate functioning meantime. The Tribunal was satisfied on this matter. In addition, the Applicant's contractual liability under the terms of his lease to pay a service charge contribution is not contingent upon him deriving some direct or indirect benefit.

22. The Tribunal had little difficulty in concluding that the estimated cost of the mains replacement was reasonable and the Applicant was liable to pay the service charge contribution of £1524.64.

Section 20C & Fees

23. The Respondent told the Tribunal that it was not seeking to recover the costs it had incurred in these proceedings through the service charge account or otherwise. The Applicant's application under section 20C of the Act is, therefore, dismissed.
24. As the Applicant had obtained a remission on fees, it was not necessary for the Tribunal to make any order in relation to fees paid to the Tribunal to have this application issued and heard.

Judge I Mohabir

27 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 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) a leasehold valuation 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 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).