



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

Case reference : LON/00BK/LSC/2015/0067

Property : 18 Maddox Street W1S 1PL

Applicant : Southern Land Securities Limited

Representative : SLS Legal Services

Respondent : Mr Syed Balkhi

Representative : None

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

Tribunal members : Judge Carr
Mr Lewicki

**Date and venue of
hearing** : 10 Alfred Place, London WC1E 7LR

Date of decision : April 2015

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the amounts demanded in connection with the Landlords Estate charge that fall within the County Court claim are payable and reasonable.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Liverpool County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years.
2. Proceedings were originally issued under claim no. 3YQN51223. The claim was transferred to the Liverpool County Court and then in turn transferred to this Tribunal, by order of District Judge Johnson on 4th February 2015.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Tribunal held a case management conference of this matter on 12 February 2015 and issued directions on the same date. In those directions it was decided that the matter should be determined on the basis of written representations and without an oral hearing.
5. The Directions gave an opportunity for either party to request an oral hearing. No request for an oral hearing has been received by the Tribunal.
6. This matter is therefore being determined on the basis of the papers alone.

The background

7. The property which is the subject of this application is an early twentieth century mid terraced development converted into six flats in 2007/8. The respondent's flat is on the top floor of the property and comprises two bedrooms, two bathrooms, a study, a kitchen and a living/dining room.
8. Photographs of the building were provided in the hearing bundle. 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 Respondent 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 specific provisions of the lease and will be referred to below, where appropriate.

The issues

10. The Applicant claims £11,815.15, of which a sum is ground rent which falls outside of the jurisdiction of the Tribunal. The period of the claim is from 1st January 2011 to 21st August 2013. The Tribunal is unable to reconcile the claim with the figures attached to the Applicant's statement as the statement includes charges which fall outside of the period of the claim.
11. The Respondent, in his statement of case raises the following issues:
 - (i) The payability of monies charged under the Landlord Estate Charge as he considers that Charge should only comprise the ground rent
 - (ii) The reasonableness of those charges as there is in his opinion no need for a large sinking fund for a recently completed property
 - (iii) The failure to carry out statutory consultation in relation to the Landlord Estate Charges
12. The Tribunal has found the way the parties have presented the case confusing. It has not been able to calculate the amount of the claim that falls under its jurisdiction because of a lack of clear information. In addition the Applicant has not provided a copy of the notice of intention to carry out major works. However the Tribunal has made a determination in connection with the payability and reasonableness of charges made under the Landlord Estate Charge which it considers to be at the centre of the dispute between the parties.

13. Having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The scope of the Landlord Estate Charges

14. The Respondent argues that the Landlord Estate Charge should consist only of the Ground Rent.
15. The Applicant states that the Landlord Estate charge is contained with clause 14 of the Fifth Schedule to the Under Lease and that it is entitled to demand sums to put towards a sinking fund.

The tribunal's decision

16. The Tribunal determines that the Landlord Estate Charge enables the Landlord to charge for anticipated future works.

Reasons for the tribunal's decision

17. The Tribunal considered the relevant clause of the Under Lease. It provides as follows:

‘Set aside (which setting aside shall for the purposes of the Sixth Schedule hereto be deemed an item of expenditure incurred by the Landlord) such sums of money as the Landlord shall reasonably require to meet such future costs as the Landlord shall reasonably expect to incur in replacing maintaining and renewing those items which the Landlord have hereby covenanted to replace maintain or renew (such sums set aside to form a sinking fund).

18. The clause is within the Fifth Schedule which sets out the services in respect of which the Tenant shall make a contribution.
19. The Tribunal determines that this clause enables the Landlord to make demands for a sinking fund.

The reasonableness of the demands towards the sinking fund

20. The Respondent also argues that the amounts demanded in connection with the sinking fund are not reasonable because the building is only seven years old and he has a surveyor's report which says there is no need for any major works.
21. The Applicant states that there is a need for extensive external works. These are to be undertaken by the Freeholder. The charges are to be spread over three years to spread the liability of the lessees.

22. The Respondent argues that although the Notice of Intention was given on 25th June 2013, the landlord has collected estate charges since 2008 and that neither have any external works been undertaken, nor are works necessary given the excellent condition of the building and no consultation exercise or surveys have been carried out justifying the works.

The tribunal's decision

23. The tribunal determines that the sums charged to date are reasonable.

Reasons for the tribunal's decision

24. Whilst the building was only converted in 2007/8 the structure of the building is over 100 years old. Moreover the surveyor's report provided by the Respondent indicates that there is a need for works to the exterior which may well be extensive and expensive.
25. The Tribunal therefore considers (i) that it is reasonable to build up a sinking fund in connection with the maintenance of the structure and exterior of the building and (ii) that it is reasonable for the Applicant to collect a relatively substantial sum of money towards the costs of carrying out currently planned repairs. It also considers that the sum collected to date appears to be reasonable.
26. This is not to say that any monies demanded by the Landlord in connection with a sinking fund will automatically be reasonable and it may well be that the Landlord will be able to reduce its demands for contributions to the sinking fund having reflected upon the anticipated costs of the works and the sums collected to date. However at this stage the Tribunal is neither required to make a determination on future reasonableness nor is it able to do so without more information.

The requirement for consultation

27. The Respondent argues that the demands for the sinking fund are not legitimate because the Applicant has failed to carry out the statutorily required consultation procedures. He refers to *Phillips v Franci* [2012] EWHC 3650 arguing that it is no longer appropriate to divide the qualifying works into sets of works and if the costs are to exceed a contribution of £250 per tenant, then the statutory consultation procedure must be carried out before the charges can be collected.

The decision of the Tribunal

28. The Tribunal determines that there is no requirement for consultation

The reasons for the Tribunal decision

29. The consultation requirements are triggered by qualifying works and not by contributions to a sinking fund.
30. The Tribunal determines that the statutory consultation process is not required in connection with contributions to a sinking fund.

The next steps

31. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court.

Name: Judge Carr

Date: 28th April 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.

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).