

12009



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

Case reference : **LON/00AH/LSC/2016/0429**

Property : **1A Natal Road, Thornton Heath
Surrey, CR7 8QH**

Applicant : **Mr Mehdi Bouriah**

Representative : **Ms Bianca McInerney**

Respondent : **Ms Paula Matthey**

Representative : **Lucy Dawe Manager of Property
Fusion Managing Agents**

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

Tribunal members : **Judge Carr
Mr J Barlow FRICS**

**Date and venue of
hearing** : **20th February 2017
10 Alfred Place, London WC1E 7LR**

Date of decision : **20th February 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £830.50 is payable by the Applicant in respect of the service charges for the years 2015 and 2016.
- (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 ending 31st March 2015 and 31st March 2016.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person and was represented by Ms Bianca Mcinerney, his wife, at the hearing. The Respondent did not appear but was represented by Ms Lucy Dawe who is the owner and manager of the managing agents of the property, Property Fusion.
4. Immediately prior to the hearing the Applicant handed in further documents, namely a loss adjusters report and associated documentation. During the hearing the tribunal allowed an adjournment to enable the Respondent's representative to provide evidence to support her case.

The background

5. The property which is the subject of this application is a 2 bedroom garden flat in a Victorian house divided into two flats. There is a small common area to the property approximately 6 ft by 3 ft which houses the electric meters and is the entrance to both flats.

6. 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.
7. 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.

8. The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

- (i) The payability and/or reasonableness of service charges demanded for the years ending 31st March 2015 and 31st March 2016. The service charges comprised

- a. Management fees for both years
 - b. Accountancy fees for both years
 - c. Health and Safety and Asbestos Report charges
 - d. Surveyor's fees
 - e. Charges for copying keys to the property

- (ii) Whether the management contract was a qualifying long term agreement attracting statutory obligations to consult.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Management fees

11. The managing agents took responsibility for managing the property in December 2014. Property management fees of £365 were charged for the part year and the charges are apportioned equally between the two flats. Management fees for the second year were charged at £630. The Respondent therefore demanded £497.50 for management fees.
12. The managing agent said that they provided a full service, that the charges were in line with the market, that they were on call 24 7. The

Respondent provided no comparative evidence demonstrating what levels of fees are charged in the industry for this sort of property.

13. The Applicant argued that the management fees were seriously inflated, that very limited services were provided and that there was no need for a 24 7 service in a house converted into two flats with a very small common area. The Applicant provided no comparative evidence of management charges.
14. The tribunal noted that the managing agents had no responsibility for collecting ground rents and the freeholder arranged the insurance. The tribunal also noted that the managing agent's contract allowed them to charge for additional services including call outs and emergency attendance at the building. The managing agent explained that in this particular case the service was bundled into the price and no additional charges would be made.

The tribunal's decision

15. The tribunal determines that the amount payable in respect of management fees is £225 per annum, meaning that for the periods in question the charge demanded from the Applicant is £337.50.

Reasons for the tribunal's decision

16. The managing responsibilities of the managing agents are very limited and the common areas of the property are very small. Additional work, such as health and safety etc and accounting are contracted out. In these circumstances no more than the very low end of management charges are payable.

Accountancy fees

17. Accountancy fees for the period in question totalled £180 for 2015 and £300 for 2016, meaning the service charges demanded from the applicant for the relevant period is £240.
18. The managing agent referred to the lease which required that an independent accountant produced the demands. The managing agent considered that the figures were reasonable and that it was difficult to find a professional accountant who would charge less.
19. The applicant considered that the charges were exorbitant for the level of service provided. He provided no evidence of comparable charges.

The tribunal's decision

20. The tribunal determines that the accountancy fees should be limited to £180 per annum, so the total liability of the Applicant for the years in dispute is £180 as he is responsible for 50% of the charges.

Reasons for the tribunal's decision

21. The tribunal considered that very limited work was required to prepare the accounts for the property as there were very few communal responsibilities. The tribunal considered further that the work done in the first year and the second year was extremely similar and could not understand why the charge had almost doubled.
22. The tribunal, in the absence of evidence to the contrary, considered that the sum charged in 2015 of £180 was reasonable and no more should be charged in the second year.

Health and Safety and Asbestos Report charges

23. In 2016 the Respondent charged £234 for a Health and Safety Report (which includes a sum of £24 for signage) and £276 for an asbestos report. The charge to the Applicant for these reports is therefore £255.
24. The managing agent explained that the reports were a necessary requirement, that the freeholder had requested that the reports were provided, that the freeholder's insurer required the reports and that works would not be carried out by contractors unless reports were in place. The managing agent did not produce any instructions from the freeholder in relation to the reports, although the tribunal granted a short adjournment to enable her to do so.
25. The applicant's representative complained that the only health and safety recommendations were that the meter cupboard was fireproofed and that a lock was placed on the cupboard. The recommendation re fireproofing the meter cupboard was acceptable but it was difficult to understand why a meter cupboard which stands 6 foot off the floor requires a lock. The asbestos report contained very limited information and simply suggested that the risk of asbestos should be considered if works were carried out to the roof.
26. The applicant pointed out that the two reports were carried out by the same man on the same visit. The visit took place at around 7 pm in 22nd October 2015 so it is difficult to assess how valuable the visit was.

27. The tribunal asked the managing agent whether in the circumstances of this property she considered the commissioning of the reports to be proportionate to the risks. She told the tribunal that she would commission reports for all properties on her portfolio regardless of the size of the common parts if the buildings predated the relevant date for asbestos risk.

The tribunal decision

28. The tribunal determines that the amount payable in respect the Health and Safety and Asbestos Reports is £276 which includes the £24 for health and safety signage. Therefore the liability of the applicant is £138.

Reasons for the tribunal's decision

29. The tribunal considered that the managing agent should have thought more carefully about the need to commission reports in connection with the health and safety risks and asbestos risks of the property. She should also have considered whether a competent property manager could have made appropriate recommendations. Even if she considered that reports were proportionate, no more than one report should have been necessary. In the light of the evidence that only one visit was made to the property, by one man, who produced limited and proforma reports the tribunal considers that the higher sum charged for one report should stand as the total payable charges.

The surveyor's report

30. The managing agent commissioned a report from a surveyor in relation to problems the first floor lessee was experiencing with damp. The cost of the survey was £350. The survey report provided evidence of damp ingress to the property and suggested further reports were necessary.
31. The applicant argues that the survey was not necessary and produced a loss adjustor's report that indicated that the property was not having any current problems caused by subsidence.

The decision of the tribunal

32. The tribunal determines that the surveyor's fees are reasonable and payable and that the applicant should pay £175 towards the costs.

The reasons for the tribunal decision

33. The tribunal notes that the survey adds very little to the managing agent's knowledge of the property. However in the light of the

continuing problems suffered by the first floor property it is reasonable to commission a survey and, despite the tribunal's concerns about the content of the report, it recognises that £350 is a reasonable charge for a report by a qualified professional.

Is the management contract a qualifying long term agreement?

34. The applicant argues that the contract with the managing agents is a qualifying long term agreement because it has continued for three years.
35. The applicant made a series of allegations about whether the documentation provided in relation to the contract and its signature was genuine. However there was no evidence provided to support the allegations.
36. The managing agent pointed to the express terms in the contract stating that it was a twelve month contract and not a rolling contract.

The decision of the tribunal

37. The tribunal determined on the balance of probabilities that the contract documentation provided to them was genuine. The documentation indicated that the contractual term is limited to twelve months and therefore does not attract the statutory consultation requirements.

The reasons for the tribunal decision

38. The tribunal considered the terms of the contract and noted the time limit provision and the express statement that the contract did not roll over from year to year.
39. The tribunal was concerned that there was no evidence that the freeholder reviewed the managing agents contract nor that she had tested the market. However the terms of the agreement were sufficiently clear to enable the tribunal to conclude that the contract was an annual contract.

The keys

40. The lessees had been charged for the copying of the keys to the building as the freeholder held no keys. The respondent agreed that that charge should have been made to the freeholder and would amend the accounts accordingly.

41. The managing agent also noted the strict requirements of the lease with regards to advance charges and agreed to amend her procedures in accordance with the lease.

42. The tribunal noted the considerable acrimony between the parties. Documentation had been provided to the tribunal which contained personal abuse and this is not appropriate from any party to proceedings before this tribunal. It is particularly behoves a managing agent to behave professionally at all times. The tribunal was particularly concerned that having instructed solicitors to pursue service charges through the county court, who wrote the Applicant a strong letter before action, that the managing agent failed to inform the Applicant that those proceedings were dropped. The tribunal notes also that the Applicant has a high level of hostility towards the manager. This may be understandable but it is very unproductive. Both parties are urged to accept the position they find themselves in and behave in ways that ensure that the best interests of all parties are achieved and in particular to engage in reasonable discussions about service provision to the property.

Application under s.20C and refund of fees

43. 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.

Name: Judge Carr

Date: 7th March 2017

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).