

12287



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

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**Case reference** : LON/00AP/LSC/2017/0124

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**Property** : 8 Crowhurst Court, Lansdowne Road, London N17 9XZ

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**Applicant** : Crowhurst Court,  
No 174 Lansdowne Road  
Management Limited

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**Representative** : Ms Joy Wood, Company Secretary

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**Respondent** : Crestwell Estates Limited

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

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**Tribunal members** : Ian B Holdsworth FRICS ACI Arb

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**Venue** : 10 Alfred Place, London WC1E 7LR

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**Date of decision** : 24<sup>th</sup> July 2017

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**DECISION**

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- (1) The Tribunal determines that the service charge demands were not lawfully made.

- (2) The service charges of £2,909.65 will only become payable when the Applicant makes a further demand accompanied by the requisite Summary of Rights and Obligations.

### **The Application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Respondent in respect of the service charges over the period 2012 to 2017.
2. On 16 May 2017, a case management hearing was held. The representatives from the Applicant and Respondent attended.
3. It was agreed at this hearing that the application is for the determination of the reasonableness and the liability to pay a service charge of £2,909.65 claimed by the Applicant for the period from 2012 – 2017.
4. The parties confirmed at this hearing that the amount of the service charge is not in dispute.
5. There is a dispute over the purpose of a payment of £3,000 by the Respondent to the Freeholders in 2013. The Respondents contend that this was a payment made on account of the service charges payable. The Applicant understood that this sum was a premium payable in return for a lease extension.
6. On 16<sup>th</sup> May 2017, the Tribunal gave Directions:
  - (i) The Applicants Statement is at page 82 of the Bundle.
  - (ii) Copies of relevant service charge demands are at pages 41-55.
  - iii) A copy of the property lease is at page 2.The Respondent did not comply with the Directions and made no submission following the case management hearing.
7. The parties were asked whether they would like an oral hearing. They both agreed that this matter could be determined by written submissions.

## **The Background**

8. Crestwell Estates Limited acquired a long lease and part share of the Freehold to the premises in 2013. They sought to extend the lease and were asked to pay a premium of £3,000 to the Freeholders for this lease extension.
9. A copy of the Deed of Extension for 8 Crowhurst Court is included in the Bundle (at page 29) dated 20 December 2013. This document states that a premium of £3,000 is paid in return for the grant of the Deed of Extension.
10. The Applicants' Submission explains that Crestwell Estates Limited subsequently argued that the £3,000 was an advanced service charge payment and that it did not constitute a premium in return for the grant of a 999 year lease term.
11. The tenants claim that this is sufficient justification for non-payment of the service charges.
12. The Applicants' Bundle includes service charge demands since 2012. These amount to £4,508.57. These demands include a sum of £1,108.46 which was outstanding at the date the interest was acquired by Crestwell Estates Limited.
13. The sum now claimed and agreed by the Applicants as unpaid service charges is £2,909.65.

## **Lease**

14. A lease dated 21 September 1970 is included in the submitted Bundle.
15. At section 3(5), The leaseholder is obliged to pay 1/9<sup>th</sup> of "all costs, charges and expenses from time to time incurred in performing and carrying out the obligations listed under Part IV of the Schedule".
16. Part IV of the schedule lists the maintenance responsibilities of the Landlord.

## **The Law**

17. The relevant legal provisions are set out in the Appendix to this decision.
18. Section 21B of the Act provides that any demand for the payment of service charges must be accompanied by a Summary of the Rights and Obligations of Tenants in relation to service charges. Subsection 3 provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection 1 is not complied with in relation to the demand. The purpose of the legislation is to ensure that a tenant is aware of their rights, should an unreasonable demand for a service charge be made. It is not intended to create a set of procedural obstacles to a lessor seeking to recover a sum that is lawfully due to him.

### **Tribunal Decision**

19. The Tribunal has considered the Bundle submitted by the Management Company on behalf of the Landlord Applicant. No submission was made by the tenant so the Tribunal must rely solely on the submitted materials.
20. The evidence submitted supports the assertion that the £3,000 paid to the Freeholders was a premium for a lease extension. This is verified by the copy of the submitted Deed of Extension at section LR7.
21. The lease contains the necessary provisions for the recovery of lawfully demanded service charges at section 3(5).
22. In the absence of any alternative evidence the Tribunal relies upon the agreement at the earlier hearing that the amount of the service charge is not in dispute. The amount being payable is that claimed at the hearing of £2,909.65. This amount is deemed reasonable and payable by the Respondents' subject to lawful demands being made.
23. The service demands submitted in the Bundle to support the Applicants' claim for outstanding service charges amount in total to a sum of £4,508.57. It is noted by the Tribunal that these do not have a summary of rights and obligations attached to the demands in accordance with the requirements set out in The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007 No. 1257).
24. No lawful demand has been made in respect of any service charge becoming due at or since the Respondents secured the tenancy of the property because the demand was not accompanied by the requisite Summary of Rights and Obligations.

25. The agreed and determined charges of £2,909.65 will only become payable when the landlord makes a further demand accompanied by the requisite Summary of Rights and Obligations. The tenant will not be able to rely on Section 20B to avoid payment as he was notified in writing that these costs had been incurred and that he would be liable to pay them. The Respondent has not disputed the reasonableness of these service demands.

**Ian Holdsworth**

**Valuer Chairman**

**24th July 2017**

## **RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

### **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.
- (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.

### **Section 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.

- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007**

Regulation 3 relates to the “Form and Content of Summary of Rights and Obligation”. Where these Regulations apply, the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, and must contain (a) the title “Service Charges — Summary of tenants’ rights and obligations”; and (b) the statement set out in subparagraph (b).

Regulation 4 provides for Transitional provisions:

“The following provisions apply where a demand (“the first demand”) for the payment of service charges was served prior to 1st October 2007—

- (a) the requirements of section 21B(3) and (4) of the Landlord and Tenant Act 1985, as inserted by section 153 of the Act, shall not apply to a further demand for the payment of service charges where the first demand was served before 1st October 2007 in respect of service charges due for payment before 1st October 2007; and
- (b) section 21B of the Landlord and Tenant Act 1985 shall apply to a further demand for the payment of service charges where the first demand was served before 1st October 2007 in respect of service charges due for payment on or after 1st October 2007.”

**Transfer of Tribunal Functions Order 2013/1036**

This Order was made on 29 April 2013 and came into force on 1 July 2013. The various amendments to the secondary legislation are set out in Schedule 2. Paragraphs 39 and 40

Paragraph 39 provides that the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 is amended as specified in paragraph 40:

“ In regulation 3 (form and content of summary of rights and obligations of interest):

- (a) in paragraphs (3), (7) and (8), for “a leasehold valuation tribunal” substitute “the First-tier Tribunal”;
- (b) for paragraphs (5) and (6) substitute— “(5) Where you seek a determination from the First-tier Tribunal, you will have to pay an application fee and, where the matter proceeds to an oral hearing, a

hearing fee, unless you qualify for fee remission or exemption. Making such an application may incur additional costs, such as professional fees, which you may have to pay. (6) The First-tier Tribunal and the Upper Tribunal (in determining an appeal against a decision of the First-tier Tribunal) have the power to award costs in accordance with section 29 of the Tribunals, Courts and Enforcement Act 2007.”