



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

**Case reference** : **LON/00AG/LSC/2017/0403**

**Property** : **First Floor Flat 50 Sprules Road  
London SE4 2NN**

**Applicant** : **Mr Kai Fabiunke**

**Representative** : **in person**

**Respondent** : **Ms Agarthha Manu**

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

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

**Tribunal members** : **Mrs E Flint DMS FRICS  
Mr S Mason BSc FRICS FCI Arb**

**Date and Venue of  
hearing** : **12 February 2018  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **19 February 2018**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the sums of £2055 and £531 inclusive of VAT are payable by the Applicant in respect of service charges, £71.17 and £166 will be payable once properly demanded. The 2016 charge of £1436.40 is not a service charge.
- (2) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985.

## **The application**

1. The Applicants seek a determination pursuant to paragraph 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 2012, 2014 and 2016. The Applicant seeks a refund of his fees and the Respondent seeks a determination under section 20C of the Landlord and Tenant Act 1985 in respect of the landlord's costs in relation to the tribunal proceedings.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The Hearing**

The hearing was attended by the applicant Mr Fabiunke accompanied by his wife. The respondent, Ms Manu was accompanied by a Mr M Ezenwg, a friend who spoke on her behalf and explained that Ms Manu was not able to read and spoke English as her second language.

## **The background**

3. The Applicant is the freeholder of a two-storey end of terrace house which has been converted into two flats with a communal entrance lobby on the ground floor. The rear garden is demised with the ground floor flat and the front garden with the first floor flat. The applicant landlord occupies the ground floor flat and the respondent the first floor flat.
4. The Applicants application was made under Section 27A of the Landlord and Tenant Act 1985 in respect of service charges relating to works carried out in 2012, 2014 and 2016.
5. 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.

## **The Lease**

6. The original lease, which is dated 25 March 1975 is for a term of 99 years from 25 March 1975, was varied by a deed dated 29 September 1988.
7. The original lease was varied so that the repairing obligations required the lessee of the first floor flat to be responsible for the repair and maintenance of pipes serving only the first floor, where such pipes are attached to the ground floor flat access shall be provided following notice of the need to gain access. The lease was further varied to share with the ground floor flat the cost of repairs and maintenance to the common parts, including the structure of the building, the steps, paths and all other items shared by both flats.
8. The demised premises are defined in the lease as comprising the flat, the staircase leading from the ground floor lobby and the front garden.

## **The Issues**

9. The relevant issues set out for determination are as follows:
  10. 2012: £2,055 in respect of major works and £71.17 in respect of repairs to a soil pipe;
  11. 2014: £166 kitchen waste pipe repair and £513 drain/gulley repair;
  12. 2016: £1436.40 repair to water damage.
13. Having read the submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

## **The Applicant's case**

### **2012**

14. Mr Fabruinke said that the 2012 major works which related to replacing gutters and drain pipes, external maintenance and decoration and redecoration of the communal lobby had been subject to s20 consultation. The amount claimed equated to one half of the total bill. He had written to the respondent requesting payment in January 2012 but had received no response. He agreed that the letter was not a statutorily compliant demand, he had served a proper demand on 20 February 2012. The second item of £71.17 related to

repairs to the kitchen soil pipe serving the first floor flat. A letter had been sent but no formal demand.

## **2014**

15. Mr Fabiunke said that the earlier repair to the kitchen waste had not been successful, a further repair costing £166 had been completed. He had written to Ms Manu on 8 September but agreed that no formal demand had been issued. S20 consultation had been undertaken in respect of below ground drainage works. Ms Manu had not responded to the consultation process. A CCTV survey of the drains had shown that there was significant root ingress and cracked joints which required attention. The work cost £846 and the survey £216 both inclusive of VAT, the total amount chargeable was £531.00. This sum was demanded on 19 November 2014.

## **2016**

16. The sum of £1436.40 related to repairs to the ground floor flat following water ingress from the flat above. The amount was based on an estimate he had obtained from a builder. Mr Fabiunke explained that he had not made a claim under the building insurance because there is a history of water damage claims which have resulted in both the premium and the excess increasing. Consequently, he did not wish to go down the insurance route. He said he was not sure that it was a service charge and had not issued a demand.

### **The Respondent's case**

17. Mr Ezenwg said that Ms Manu could not ascertain that all the work had been completed, she was willing to pay whatever was due under the lease. As regards the water ingress in 2016 a plumber had checked the bathroom and confirmed that there were no problems with the plumbing.

### **The tribunal's decision**

18. The tribunal determines that the service charges for 2012 and 2014 are reasonable in amount. However, no formal demands have been issued in respect of the £71.17 and £166, these sums are not payable until statutorily compliant demands have been issued.

### **Reasons for the tribunal's decision**

19. The tribunal is satisfied that the charges are payable in accordance with the varied terms of the lease. No evidence was produced to indicate that the works had not been satisfactorily completed.

### Application under s.20C

20. At the hearing, the respondent applied for an order under section 20C of the 1985 Act on the grounds that she considered that the applicant had harassed her and referred to many letters being put through her door.
21. Mr Fabiunke confirmed that the only costs he had incurred were the application and hearing fees totalling £325. He considered that he had no option but apply to the tribunal because Ms Manu did not respond to his letters or suggestion that they meet to try and reach an agreement. He said that he would like the fees refunded.
22. It was clear during the hearing that the relationship between the parties has broken down. There were claims and counter claims regarding each others behaviour. Of the items in dispute two had been properly demanded, two had not and the final item on the applicant's own admission was not covered by the service charge provisions and no demand had been issued.
23. There are no provisions in the lease under which the landlord can add the costs of the application to the service charge account. In the circumstances the tribunal declines to make an order under section 20c since there are n o lease provisions under which the applicant may add his costs to the service charge.

**Name:** E Flint

**Date:** 19 February 2018

## **ANNEX - RIGHTS OF APPEAL**

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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 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.