13020

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2018/0244**
Property	:	**284 & 292 Old Lodge Lane, Purley, CR8 4AQ**
Applicant	:	**Dedman Properties Limited**
Representative	:	**Mr Graham Dedman (managing director)**
Respondents	:	**(1) Mr Rasaih Rajalingham – flat 284** **(2) M & J Partners Limited – flat 292**
Representatives	:	**Rasiah & Co for the 1st Respondent** **Pims & Co Ltd for the 2nd Respondent**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Ms Flynn MA MRICS**
Date and venue of Hearing	:	**10/9/18 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17/10/18**

DECISION

Decisions of the tribunal

(1) With respect to flat 292, the tribunal determines that no service / administration charges are payable by the applicant in relation to the service charge years 2015-2018.

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 2015-2018.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr Dedman at the hearing and the 1st respondent was represented by Ms Piears of counsel.

4. The 2nd respondent did not appear and was not represented at the hearing either. The background concerning this is as follows:

5. Pims & Co sent an email to the tribunal on 1/9/18 stating that the hearing listed for 10/9/18 should be adjourned for 28 days as they did not receive any letters, notification, or directions from the tribunal and were therefore unable to provide their dates to avoid and they had another hearing date at the County Court sitting at Croydon on 10/9/18. Furthermore, they received documents from the applicant on 24/8/18. However, because of the bank holiday, the documents only came to the attention of Pims & Co on 29/8/18. In the circumstances, they requested more time to allow a response to the applicant's documents.

6. The tribunal sent an email dated 5/9/18 asking for clarification regarding the relevance of the case listed at the County Court sitting at Croydon and also the date on which the second respondent moved offices and the date on which the applicant was informed of the new address. A reply was provided on the same day by email confirming that the matter listed at the County Court sitting at Croydon was a separate matter, Pims & Co had moved address on 1/3/18 and the applicant was notified of this by email on the same date, and the respondent notified its updated correspondence address on 6/4/18.

7. The applicant stated in an email dated 5/9/18 that Pims & Co did not notify it of any change of address, it was first made aware of the change of address when it received an email from them dated 15/8/18, and in any event the applicant had emailed to Pims & Co and directly to the second respondent a copy of the tribunal's directions dated 2/74/18 (together with the completed Scott schedule and supporting documents) on 25/7/18 to which it did not receive any response.

8. Having considered the written submissions, the tribunal refused the second respondent's request for an adjournment as it was not convinced on the material before it that the second respondent was entirely unaware of the proceedings until now, the relevance of the County Court hearing was still not clear, the matter required resolution, and the parties must attend the hearing on 10/9/18. The parties were notified by email dated 5/9/18.

9. The tribunal notes that the second respondent did not make any further written representations to the tribunal and did not provide any further explanation for its non-attendance at the hearing.

10. Mr Dedman repeated in his oral evidence at the hearing that the applicant was not informed of any change of address concerning the second respondent or its representative until it received an email from them dated 15/8/18. In any event, the second respondent and its representative were emailed a copy of the tribunal's directions dated 2/7/18 (together with the completed Scott schedule and supporting documents) on 25/7/18 (copies of the relevant emails are on pages 184-189 of the applicants bundle), therefore, the second respondent and its representative would have been aware of the application, the hearing date, and what they were required to do in preparation for the hearing.

11. The tribunal found as follows. The applicant provided the second respondent and its representatives' address in its application. The tribunal posted correspondence to Pims & Co concerning the application, the CMC, and issued the Directions dated 2/7/18, to the address provided in the application. The tribunal notes that none of the correspondence was returned as undelivered. Having considered the oral evidence from Mr Dedman, having noted the copy of the emails sent to the second respondent and its representative on 25/7/18 (including a copy of the tribunals directions dated 2/7/18), having noted the letter dated 1/8/18 sent to the tribunal by the applicant confirming that it had sent documents (including the directions dated 2/7/18) to the second respondent and its representative on 25/7/18, and having noted that the second respondent received a copy of the applicant's bundle on 24/8/18 which contains a copy of the emails sent on 25/7/18 (referring to the attached tribunal's directions) and no evidence in rebuttal from the second respondent disputing that it had received a copy of the tribunal's directions (the tribunal notes that the email from Pims & Co dated 1/9/18 does not state that it had not

received a copy of the tribunal's directions but specifically states that it did not received a copy of the directions "from the tribunal"), the tribunal is satisfied that the applicant was not notified of the second respondent and its representatives change of address until 15/8/18, the applicant had provided in its application the second respondent and its representatives' last known address, and the second respondent and its representative were made aware of the application / the directions /the hearing date on 25/7/18. In any event, the second respondent and its representative were aware of the same by Friday 24/8/18, the date on which Pims & Co received the applicant's bundle. The fact that Monday 27/8/18 was a bank holiday does not explain why the documents from the applicant would not have been considered on the Friday before the bank holiday or why they were not considered until Wednesday 29/8/18? In the circumstances, the tribunal was entitled to refuse the request for an adjournment on the basis that it was not convinced on the material before it that the second respondent was entirely unaware of the proceedings until now [29/8/18]. The tribunal notes that despite the clear direction that the second respondent must attend the hearing, the second respondent has failed to attend or to provide any explanation for its non-attendance. Furthermore, no additional written submissions have been made requesting an adjournment (and any additional / new reasons for it) or opposing the application.

12. Given the circumstances referred to above, and having considered the overriding objective to deal with cases *fairly* and *justly*, the tribunal determined that the hearing should proceed in the second respondent's absence.

The background

13. Flat 284 is a 3 bedroom purpose built flat above shops. Flat 292 is a 3 bedroom purpose built flat above a ground floor flat.

14. 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.

15. The applicant holds a long lease of the respective flats 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 will be referred to below, where appropriate.

The issues

16. With respect to flat 284, at the start of the hearing the parties agreed that the service charge only concerned the insurance premium for the building, the amount charged by the first respondent was reasonable in amount and was payable under the terms of the lease, and the applicant

had always paid the relevant insurance premium and was not in arrears with its service charge account. In the circumstances, both parties agreed that there was nothing for the tribunal to resolve or determine.

17. With respect to flat 292, the applicant's main concern is that the second respondent, despite repeated requests, has failed to provide any copy invoices confirming that any of the claimed works were carried out or paid for. Furthermore, despite repeated requests, the second respondent has failed to provide a statement showing the state of the applicant's service charge account.

The applicant's case

The material parts of Mr Dedman's statement dated 25/7/18 (pages G135-G136) can be summarised as follows:

18. Pims & Co have not been carrying out the maintenance and there have been numerous complaints from the applicant's tenants. The common areas were not being cleaned and the stairways were locked. When the applicant requested additional information regarding the service charges, Pims & Co was unable to supply this. The applicant was concerned to discover that the directors of the second respondent were also involved with Pims & Co. Despite offering to view the paperwork at their offices, the applicant has only seen a few invoices from suppliers which have had an administration charge added to them by Pims & Co. The other invoices are from Pims & Co and do not give any information as to who actually completed the work.

19. The applicant feels that the charges are unreasonable and the second respondent does not have any documents to support their claim that the charges are correct or were actually carried out. The budget for 2018 includes legal fees of £700 which should not be included.

20. The applicant has made several payments on account but has not received a statement of account showing how the payments have been allocated. Pims & Co have been adding administration charges and late fees to the applicants account even when the account has been in credit.

21. On several occasions the applicant has had to carry out maintenance work at the property in order to keep its tenants or to be able to re-let the premises.

The material parts of Ms Stanley's statement dated 20/8/18 (pages G192-G193) can be summarised as follows:

22. She is the applicant's Secretary. Since Pims & Co took over the maintenance of the property the applicant had received numerous complaints from its tenants that no work was being done. In order to let

out the applicant's flat, the applicant has had to redecorate the stairways, clear rubbish, and clean the common areas at its own expense on several occasions.

23. The applicant became concerned regarding the charges for maintenance when it received the invoices in 2014 as the applicant knew that the work had not been completed. The applicant had repeatedly asked for copy invoices showing actual expenditure but all that had been provided was Pims & Co's own invoices and no confirmation that they carried out the work. Despite querying the invoices, the applicant was making payments on account but Pims & Co was unable to confirm how they were allocating the payments. The only statement of account provided by the second respondent dated 1/1/18 shows that the second respondent had been charging additional fees despite the applicant not being in arrears. The second respondent was also not allocating the applicants payments to invoices issued but adding charges to the applicants account.

24. She had been dealing with Michael Ellis (Director of Pims & Co) on several occasions and he promised a statement of account will be provided. However, when she queried the statement he had sent, he was unable to explain the statement.

25. The applicant also received letters from SLC Solicitors on behalf of the second respondent regarding the outstanding service charges. However, when the applicant again requested the accounts and paperwork to support the charges, the solicitors were unable to obtain this information and confirmed the same in an email dated 14/3/18. The solicitors confirmed that they were without instructions and no further action has been taken against the applicant.

26. The budget for 2018 includes legal fees of £700 which the applicant does not feel should be included in the budget. The applicant has queried all the charges regarding bulk waste and has not seen any accounts from Pims & Co since 2016. The applicant has again asked for details, which has not been provided. The applicant does not have a statement of account showing how payments have been allocated, the applicant has not received any accounts were 2017, and the applicant does not know on what basis the budget for 2018 has been calculated.

<u>The material parts of the oral evidence from Mr Dedman and Ms Stanley can be summarised as follows:</u>

27. The most recent statement concerning the service charge account was received in January 2018 from the second respondent's legal representatives SLC Solicitors (copy on page G124 of the applicants bundle). The applicant found it difficult to understand the figures as set out in that document. Ms Stanley wrote a letter dated 20/2/18 to SLC Solicitors stating that it was unclear as to how the figures [regarding the

outstanding service charges] had been calculated (page G128 of the applicants bundle). SLC Solicitors finally responded in an email dated 23/5/18 stating "*Unfortunately we are without instructions at present. We will be in touch as soon as we hear from them further*". However, to date, the applicant has not had any further response to its letter. Given the lack of information from the second respondent, the applicant does not know what or why the second respondent claims to be owed as service / administration charges. Given its own recollection of payments made, the applicant is of the view that its service charge account should be in credit by approximately £500.

28. Pims & Co does not carry out any works itself and simply arranges for others to carry out any relevant works and then invoices the applicant. The applicant has only been provided with 4 such invoices concerning the service charge year ending 31/3/15 (pages C36, C37, C38, and C39). However, despite repeated requests, the second respondent has failed to provide any invoice from the relevant person / company carrying out the works confirming that works had been carried out and that Pims & Co had been invoiced. Given the failure to provide the information requested, the applicant is of the view that Pims & Co have simply made up the charges.

29. In its letter dated 7/4/16 (page D65) the applicant informed the second respondent that it would not be making any further payments until it had received a full breakdown and copy invoices for the expenses incurred for the claimed maintenance.

30. In its letter dated 27/4/16 (page D51) the applicant informed the second respondent that despite numerous requests it had not seen any actual invoices for works completed at the premises. Furthermore, the applicant did not accept any late payment charges or legal costs as it had made it clear in its previous emails that it would not make any payment until it received evidence of the expenditure.

31. In its letter dated 13/7/17 (page E82) the applicant informed the second respondent that it had requested on a number of occasions supporting paperwork for the charges with proof of expenditure.

32. In its letter dated 21/12/17 (page E101) the applicant informed the second respondent that it had requested actual invoices from the suppliers but the second respondent had only supplied invoices from its own company and that the applicant cannot agree to any of the figures until it had seen the actual invoices used to compile the service charge accounts.

33. In its letter dated 22/2/18 (page G129) the applicant informed the second respondent that it had repeatedly informed the second respondent that it would not be making any further payments until it

was provided with the information requested for the previous years' service charge accounts.

34. Despite the requests made by the applicant over the years, the second respondent to date has failed to provide the relevant invoices / information requested.

35. Given the lack of information / evidence from the second respondent, the tribunal should determine that no service or administration charges are payable for 2015-2018.

36. Although the applicant had paid £2,213.60 in 2015 and £500 in 2017, and is of the view that its service charge account should be in credit by approximately £500, the applicant is prepared to take a pragmatic approach, especially given that it is difficult to calculate the state of the service charge account given the lack of information before the tribunal, and accept that some works / service would no doubt have been done / provided and therefore the applicant does not seek any re-imbursement of monies paid and is happy for the tribunal to simply find that there are no arrears in the service charge account. Furthermore, the applicant does not wish to make any application under s.20C or any application for re-imbursement of fees paid. The applicant has now sold the property and does not wish to waste any more time on this matter.

37. However, if the second respondent were to re-open the issues by way of any successful appeal, the applicant reserves its position and would also make submissions on s.20C, re-imbursement of the application and hearing fees, and further consider making an application for costs on the basis of unreasonable behaviour on the part of the second respondent.

Tribunal's findings and reasons

38. The tribunal notes the applicant had set out its case in its application, had challenged every item of expenditure and charge in its Scott Schedule, and had provided its evidence in a bundle as directed by the tribunal. The second respondent has failed to comply with the tribunal's directions dated 2/7/18 and despite receiving the applicants bundle on 24/8/18, the second respondent has failed to provide any evidence whatsoever challenging the applicant's case.

39. The tribunal agrees that it is unclear what service / administration charge the second respondent claims is outstanding and why. Despite the applicant requesting clarification, the second respondents Solicitors have stated that they are without instructions and the matter remains unclear.

40. The tribunal notes that the accounts for 2015 and 2016 are not audited and no accounts have been provided for 2017 or 2018. The applicant has consistently requested copies of the actual invoices from the contractors / suppliers carrying out any claimed works / services but none has been provided by the second respondent and the applicant has consistently challenged whether works were in fact carried out.

41. Given the evidence provided by the applicant and the lack of any evidence to the contrary from the second respondent, the tribunal finds no evidence of any works / services carried out / provided by the second respondent and accordingly finds that no service / administration charges are payable by the applicant with respect to the service charge years 2015-2018.

42. Given the lack of information and consequently the difficulty in calculating the service charge account, the tribunal commends the pragmatic approach taken by the applicant in seeking to close matters and not claiming any re-imbursement from the second respondent.

Name: Mr L Rahman **Date:** 17/10/18

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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).