12663

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AT/LSC/2017/0284**
Property	:	**3, Southerndown, Ashfield Avenue, Feltham, Middlesex TW13 5BE**
Applicant	:	**Southern Land Securities Limited**
Representative	:	**Ben Maltz**
Respondent	:	**Rosemarie Johnson**
Representative	:	**Khadine Johnson Rose**
Type of application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal members	:	**Judge Hargreaves** **Trevor Sennett MA FCIEH**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **5th March 2018**
Date of decision	:	**6th March 2018**

DECISION

DECISION

1. The Tribunal makes various decisions which (for ease of reference) are set out under particular headings below.
2. This being a referral from the county court of two actions being dealt with together (claim numbers B37YP804 and D00SM049) the proceedings will have to be transferred back to the county court to deal with costs and interest as appropriate.

REASONS

1. These proceedings have a regrettably lengthy procedural history. A brief resume is required to demonstrate why we have made decisions covering the period up to the end of the service charge year 2016-2017. Page references are to a bundle and a supplementary bundle (prefixed by SB).

2. The Applicant claimed nearly £6000 in arrears of service charges and ground rent and costs from the Respondent by claim form issued in the county court on 6th November 2015 in respect of the period "up to and including the 12th October 2015". These proceedings became B37YP804. In December 2015 the Respondent admitted part of the claim (p8-13). She made it clear that she wanted to see invoices in respect of the works for which she was charged. Judgment in default was entered on 17th March 2016 (p14) and that was set aside in May 2016 (p15). By 21st September 2016 the Applicant was at liberty to enter judgment (p18) and obtained judgment for over £7000 on 3rd October 2016. After that the Applicant took steps to obtain a possession order/forfeiture of the lease and in D00SM049 obtained such an order on 19th May 2017. The Respondent started to try to remedy the situation she was in, in July 2017 (p22), and finally, in a case management order that is nigh on unintelligible on the face of it, the determination of service charges was transferred to the Tribunal by order made in the county court on 27th July 2017.

3. The Tribunal gave directions on 27th August and arranged a hearing for 23rd November. Even at this stage, two years into protracted litigation which had got precisely nowhere in terms of dispute resolution, the directions had to be varied and extended with a hearing date postponed by another three months. It is not surprising that there was little clarity at that hearing about what was before the Tribunal: the Applicant did not exhibit the claim form in D00SM049 but in a brief adjournment retrieved it electronically and we are persuaded by Mr Maltz's careful analysis that the arrears figure (before the county court in both proceedings) includes sums charged, including those on account, to May 2017. In any event, there is a sensible basis for determining all the figures referred to the Tribunal in Mr Milward's careful statement of case as it can be in no-one's interests to leave any issues outstanding, some of them being so stale that even Ms Johnson Rose's recollection was pushed.

4. Neither party submitted any really useful witness evidence, both relying on statements of case. Mr Milward's statement of case is at p42 and it sets out the money claim carefully, but he is a paralegal in the Applicant's legal department and could give hardly any useful evidence on factual matters, which is where an employee of the managing agent's would have been more useful to us. The Respondent's statement of case is at p36 and raises more questions than it answers, but does stress the desire to see all relevant invoices. It does not really plead any case on reasonableness or otherwise. Despite the wording of direction 1 (disclosure, p2), the Applicant did not disclose the supporting invoices until the supplementary bundle was prepared, which Ms Johnson Rose only received on Friday 2nd March. Had we been concerned with costs (and we are not, no 27A application being made and this matter not forming part of the county court pilot scheme) this failure would be a matter we would have taken into account if we could. The supplementary bundle produced even included insurance and accountancy costs which were excluded by direction 1 because they were not disputed by the Respondent. The criticism that it is onerous to expect the Applicant to produce these invoices at an early stage of the tribunal proceedings is undermined in this case by the long standing dispute based on their absence and the Respondent's frequently expressed desire to see them. Despite their late delivery, Ms Johnson Rose had the opportunity to consider them over the weekend. It would have been disproportionate to adjourn the case again, but we are grateful to her for proceeding so pragmatically.

5. The lease was granted in 1967 (p26) and is out of date in terms of management provisions. The Respondent's property is one of six maisonettes which are contained in a pair of semi-detached houses, and one detached: see the photograph at p39 particularly. Basically the Respondent is liable for one-sixth of service charges based on the Applicant's costs of undertaking three shortly expressed obligations set out in the Fourth Schedule (p34). See also clauses 3(1)(d)(h), 4(2), and 5(4) (the repairing covenants). The Applicant can raise interim invoices on account and charge for the year 1st October-30th September as it is now in the process of doing. The Applicant's systems have been improved substantially since it presented evidence to the Tribunal in previous proceedings in 2011 (p81) when it appears to have turned up with little or no evidence to support its case on service charges. Nothing in that decision provides a mandate for our approach in this case.

Management fees

6. We are considering this item separately. In each case the Respondent complains about the level of service and the expense. No relevant evidence was provided by the Respondent as to what should have been charged instead. Having analysed the amounts in

question for each year in question, we have concluded that the management charges are reasonable and recoverable by the Applicant. They are within the unit charges for a property in this area. To clarify, the Respondent's charges of management fees for 2010-2011 (£150 plus VAT SBp7), 2011-2012 (£154 plus VAT SBp13), 2012-2013 (£162 plus VAT SBp19), 2013-2014 (£170 plus VAT SBp29), 2014-2015 (£178 plus Vat SBp25), 2016-2017 (£197.60 plus VAT SBp50) are reasonable and payable. The managing agents invoiced the tenants, produced accounts, and organised repairs as required.

7. We consider the other items that were disputed, individually. In each case the sums will be reduced to one-sixth.

8. **2010-2011:** the sum of £135 (drain repairs SBp5) is reasonable and recoverable, as is the claim for £1025 plus VAT for gutter (etc) repairs (SBp6). It is an estate expense even if not of direct benefit to Flat 3.

9. **2011-2012**: the sum claimed for fence repairs carried out on 29th June 2012 (£562.80 SBp12) is not recoverable because we have no evidence that it was carried out on a fence for which the Applicant was liable, it being clear from the lease that various fences are the responsibility of tenants. Without explanatory evidence, the need for the repair or its location was wholly unclear on the Applicant's evidence, and challenged by the Respondent.

10. **2012-2013**: the sum of £306 (SBp18) for removal of fly tipped rubbish we do allow, even if it was required to gain access for the fence works referred to above, on the grounds that we are prepared to accept that the Applicant would be responsible for this, and the amount is reasonable.

11. **2015-2016:** again we allow as reasonable and recoverable the sum of £456 for removal of rubbish from the driveway, plainly within the Applicant's obligations (SBp41).

12. **2016-2017:** the sum claimed for £180 for clearing gutters in October 2016 (SBp48) is allowed as reasonable. The sum of £1535 claimed for works carried out to the driveway on 1st August 2017 (by one of the tenant's - Mr Moodie's - companies, Renovate) we allow in the sum of £1250 as reasonable, having heard evidence from Ms Johnson Rose that the works comprised the clearance of two skip loads of soil (dug by spade), by one man over four days (SBp49). The Applicant is obliged to keep the driveway in repair, and that includes clearing it.

13. **Major works:** this provoked Ms Johnson Rose's most vehement opposition though it was never fully particularised. But we agree with the analysis presented by Mr Maltz: on the basis of documents in the main bundle (p155-187) the works were covered by the s20

procedure, specified by a surveyor (p164), supervised by him, and carried out (again by the tenant Mr Moodie's company Renovate) at less than the cheapest price which the first three companies tendered for. So Mr Moodie, although undoubtedly doing himself a favour (twice over) undercut a quote which was nearly 50% that of the two most expensive quotes. There is no evidence that the Respondent objected properly at any stage of the procedure; telephone complaints really do not assist the Tribunal or provide credible evidence of unreasonable workmanship so long after the event. There is no credible evidence from the Respondent to prove that works paid for were not carried out or done to an unreasonable standard (we might venture to suggest that Mr Moodie, living in Flat 1, had no incentive to execute poor workmanship anyway). Given the weight of evidence supporting the Applicant's case and the lack of anything to put in the balance against it save for assertion and hearsay, we conclude that the charges on p190 are reasonable and payable (£7,933.64), particularly as, overall, these were maintenance works to the outside of three domestic houses, as referred to above, including roof works requiring scaffolding. If the Respondent put the Applicant to proof, it met the challenge under this heading.

14. No administration charges were dealt with by the Tribunal. The Applicant agrees that interest is not chargeable under the lease.

15. It is regrettable, but unavoidable, that the case now has to return to the county court – unless the parties can agree a financial outcome and save themselves further costs, which probably exceed by now the total of the disputed sums we have dealt with above.

Judge Hargreaves
Trevor Sennett MA FCIEH
6th March 2018

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).