12685

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/LSC/2017/0344**
Property	:	**128 Somerset Gardens, Creighton Road, London N17 8HA**
Applicant	:	**Radstock Court Management Limited**
Representative	:	**Mr Galliers**
Respondent	:	**Mr P Royan**
Representative	:	**None**
Type of application	:	**For the determination of the reasonableness and liability to pay service charges and administrative charges.**
Tribunal members	:	**Mr N Martindale FRICS** **Mr H Geddes RIBA**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**28 March 2018**

DECISION

Decision

1.1 The Tribunal determines that the due proportion of the following sums, properly attributable to the Property, are reasonable and payable by the Respondent to the Applicant (where objection has not been withdrawn) under the final service charge amounts for year ending December 2015 only, on:

1.2 Buildings Insurance Premium: £24,755.

1.3 Management Fee: £13,250. (Objection withdrawn by Respondent)

1.4 & 1.5 Maintenance - Cleaning and Gardening: £18,729.

1.6 Maintenance - Other: £ 24,101. (Objection withdrawn by Respondent).

2.1 The Tribunal determines that the following administrative costs are payable by the Respondent to the Applicant:

2.2 Solicitors costs £150 plus VAT.

2.3 Administrative fees £60 and £18 including VAT.

3.1 The Tribunal determines that the Applicant is entitled in law to recover the service/ administrative charges.

3.2 The Tribunal declines to make an order under S.20C.

3.3 The Tribunal does not make an order to reimburse application and hearing fees.

Application and Directions

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 Respondent in the calendar and service charge year of 2015. Although question had been raised at the Directions hearing as to the sums due under the 2016, at the start of this hearing the parties agreed that only the 2015 year service charges would be dealt with. There is also a parallel application for recovery of administrative charges of the landlord under Schedule 11 of CLARA 2002.

2. Directions were issued from this Tribunal, by Judge Rahman at a hearing on 10 October 2017. The relevant legal provisions are set out in the Appendix to this decision.

Hearing

3. The Applicant had begun action in the County Court for non-payment of various service charges and administrative fees by the Respondent and the case was duly referred to the Tribunal when the Respondent challenged the reasonableness and payability of those sums.

Background

4. The property which is the subject of this application is a flat, located in a large modern block of flats, situated in Creighton Road, Tottenham, London N17 8HA.

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.

6. Mr Halsey, Mr Loftman and Ms McLaughlin attended as observers only, in support of the Respondent.

7. The Respondent 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. The lease also provides for payment of the landlord's administrative costs arising. The specific provisions of the lease setting out the services and the basis of charge, proportion and recovery were not referred to nor queried by the Respondent.

Issues

8. The papers received from each party very briefly set out the heads of service charge, administrative costs and the amounts claimed. Both sides generally complied with the directions. However in order to deal with all matters, the Tribunal focused the hearing around the directions dated 10 October 2017. These set out 6 service charge issues; 3 administrative costs issues; and whether a S.20C order should be made and if the application/ hearing fees should be returned to the Applicant; 11 in total. The Tribunal decided to take each of these 11 issues in order, inviting each side to address them in turn.

9. It was apparent at the beginning of the hearing and from reference to the earlier directions hearing that the Respondent is very and mostly concerned about the way that the management company, of which all leaseholders appear to be voting shareholders, has and is being run. At the hearing the Tribunal repeated the fact that the operations of such companies, the investigation and findings of fault or otherwise in their operation as a result, does not fall within the jurisdiction of this Tribunal. It was therefore not a matter we could hear evidence on or deal further with, a fact that the Respondent noted and accepted.

10. It was quickly established between the parties that the hearing should only concern the actual service charges arising from the year ending December 2015 and not those for service charge year 2016 as well.

11. **Buildings Insurance Premium:** The Applicant explained that the current managing agents Carringtons, had been appointed in 2016 and that since then the insurance premiums had been significantly lower than for earlier years, including that for 2015. The Respondent suggested that such savings should have been achievable for earlier years had the insurance been tendererd and investigated more thoroughly and he felt £18,000 was appropriate, based on that of 2016. The Applicant considered that the payment made at the time was reasonable and payable in the service charge since then.

12. **Management Fee:** The Respondent withdrew his objection.

13. **Cleaning:** The Applicant explained that the contract from 2016 onwards had been for work to be provided to a higher standard and that as a result the cost was higher. For example the interior carpets were required to be washed in the earlier specification. The Respondent explained that the contract for such work was overpriced; that the previous contractors were cheaper and that the work should have been left with them. He complained that he had to do a lot of the cleaning work inside the communal areas himself. He explained that he would have referred the Tribunal to a series of documents about cleaning, but which unfortunately he had lost and did not form part of the bundle.

14. **Gardening:** The Applicant referred to quotes he had obtained in 2014 which ranged from £3,500 to £9000 including one for £3,600 from Haus Management. There was some dispute between the actual sums for gardening as opposed to gardening and cleaning, as the two items appeared as one in the 2015 accounts. The Applicant maintained that the management company did not want to save money on this service when they could have done so and that subsequently from 2016 onwards the cost had been substantially changed showing that it could have been better

value in 2015 as well. The Respondent explained that when the new agent took over in 2016 a new lower specification involving fewer visits and reduced work particularly in winter months, was set up and that arrangements for bulk waste removal from the estate had changed. These were the reasons for the 2015 to appear more expensive.

15. The Respondent then made a general point about his inability to get access to contracts, specifications, invoices and receipts for payments made by the management company to contractors in general on the estate and that this was not forthcoming from the managing agent despite repeated requests. The Applicant disputed that access had not been provided when requested. The Respondent was particularly concerned that he had not been provided with access to the 2016 service charge accounts which had hampered his ability to prepare and present his case particularly about the comparators for 2015.

16. **Window Cleaning:** Although this was not a separate heading, it did form part of the combined price in the 2015 accounts for Cleaning and Gardening. The Applicant referred to a considerable reduction in price from £3665 in 2015 to £2153 in 2016 and that this was again evidence of overcharging in the earlier year. He referred to a price of £3000 he had received from Haus Management for this service though as with earlier prices the exact specification and its comparability was unclear.

17. **Maintenance (Other):** The Respondent withdrew his objection.

18. **Solicitors Costs:** The Applicant explained that £1,095 including VAT was Brethertons (the management company's retained solicitors) standard charge for issuing proceedings for debts and that no further breakdown could be provided as to how this figure for pre-hearing work at county court, was calculated. The Respondent considered this figure to be excessive for what was a straightforward administrative task in debt collection and the fact that only 'reasonable' costs of legal work could be collected under the lease.

19. **Administrative Fees and Recoverability:** The Applicant informed the Tribunal that the costs of £60 and £18 including VAT were incurred by the management company in the initial chasing of service charges before it had been referred to the solicitor, and that these were reasonable charges for the correspondence and work involved. The lease provided for reasonable charges to be recoverable and these charges were reasonable. The Respondent considered that they could have been lower for the work done in sending out standard chasing letters.

20. Although external decorations was not an issue for determination

identified in the directions, it did appear in a separate Scott Schedule in the bundle. The Respondent contended that the payment for this work had been taken from the reserve fund to cover works carried out in earlier years; that this movement of funds had not been transparent and that the S.20 consultation process prior to these works had not been carried out properly. The Applicant explained that payment for these works had been taken partly from reserve funds in separate years, 2014, 2015 and later in 2016. The Tribunal reminded the parties that this item had not been identified as an issue for determination at the hearing.

21. **S.20C order:** The Respondent asked for this to be made because there had been no proper breakdown of the charges made before the matter was referred to the county court and that mediation was refused by the Applicant. He also re-iterated his frustration and concern over the way the management company was being run, including how elections were being organised, services and works specified and tendered and how contractors were selected and paid.

22. **FTT Application and Hearing fees:** The Applicant accepted that these had to be met by the management company and not re-imbursed by the Respondent directly.

Tribunal's Decision

23. The Tribunal has read and considered the evidence and submissions from the parties in the documents provided. Even though other matters were raised. it makes determination only on those issues identified at the directions hearing. Whilst the Tribunal acknowledges the Respondent's account of the unfortunate series of events which had led to his loss of many key documents in support of his position for the hearing, the fact is that these were not available. The Tribunal can only rely on the representations and supporting information actually provided.

24. It was evident to the Tribunal that the Respondent's main concern at the estate was the way in which the management company was operating but these matters lie outwith its jurisdiction, leaving the Tribunal to deal only with the remaining matters of service charges and administrative fees. The actual due proportion under the lease payable by the Respondent is left to the parties to calculate as this arithmetical exercise was not in dispute.

25. Evidence as to the correct basis of the buildings insurance, the risks, sum insured, and excess due was not contested simply that a better deal could have been obtained as evidenced by the 2016 premium. When arranging such insurance it is though well established that the landlord does not

have to select the cheapest insurer. In view of the sparse evidence provided of the comparability in other respects the Tribunal has little alternative but to determine that the 2015 premium actually paid out, is reasonable and payable at £24,755.

26. Although the management fee for 2015 had been objected to by the Respondent initially, shortly into the hearing this objection was withdrawn, £13,250 is therefore payable.

27. As with the challenge to the premium for buildings insurance, very little material of a properly specified, quantified, priced and therefore comparable nature to the existing contract for Cleaning and Gardening, was made available. This made it difficult to justify any change from the sums shown as expended in 2015 for this combined service as shown in the 2015 accounts. Although the price for these services had fallen for 2016 there was no clear explanation as to whether the services were the same for this later year and therefore whether the charge for 2015 was wrong. The Tribunal therefore determines £18,729 is reasonable and payable.

28. Maintenance (Other): Although 'other' maintenance costs had been objected to by the Respondent initially, shortly into the hearing this objection was withdrawn therefore £24,101 is payable.

29. Solicitors costs: The Tribunal was concerned at the lack of detail from the Applicant in support for the claim for over £1000 of pre-court legal costs. On consideration of the spartan correspondence generated between the solicitors and the Respondent it concluded that a sum of £150 plus VAT was sufficient to cover the relatively small time spent on straightforward debt collection work done.

30. Administrative fees: The Tribunal noted that this the initial debt chasing work carried out by the management company before the matter was referred to the solicitors for the company. Again on consideration of the tasks involved and their simplicity the Tribunal determines that both the £60 and £18 including VAT were reasonable and payable in full by the Respondent.

31. Entitlement to recovery Administration Charges: On a straight reading of the lease in relation to the provision for recovery of charges to a single leaseholder, the Tribunal finds that the Applicant is entitled in principle to recover sums due for these purposes and therefore those in the two preceding paragraphs albeit at the levels stated.

32. Order under S.20C: The Applicant was mainly successful in, and the Respondent withdrew other of the issues first raised and so it would

therefore not be unreasonable for the Applicant to seek to recharge these costs under the service charge to all leaseholders in a later year. The Tribunal makes no order.

33. FTT fee reimbursement: The Applicant accepted that it was appropriate for it to meet these costs and not to seek them to be repaid by the Respondent. This does not prevent it from adding to their cost to a service charge to all leaseholders in a later year.

Name: Neil Martindale Date: 28 March 2018

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 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).