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		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	:	**LON/00AH/LSC/2014/0538**
Property	:	**232B London Road, Croydon, Surrey CR0 2TF**
Applicant	:	**Mr MZA Khan**
Representative	:	**In person**
Respondent	:	**Mr SH Shah**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge T Cowen** **Mr K M Cartwright JP, FRICS**
Venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	:	**9 March 2015**
Date of Decision	:	**17 March 2015**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that no service charges are payable by the Applicant to the Respondent for the following years:

a. The year to 6 April 2013

b. The year to 6 April 2014

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the Tribunal proceedings, if any, may be passed to the Applicant through any service charge.

(3) The Tribunal determines that the Respondent shall pay the Applicant £740 within 28 days of this determination, in respect of the reimbursement of the Tribunal fees paid by the Applicant and other costs of this application.

The application

1. The Applicant seeks a determination pursuant to section 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 ending (a) 6 April 2013, (b) 6 April 2014 and (c) 6 April 2015. The Respondent Landlord has by letter dated 1 August 2014 demanded a total of £8,699.38 in respect of service charges for at least some of the said years. The Tribunal issued directions at a pre-trial review on 18th November 2014.

2. The Applicant also seeks an order under section 20C of the 1985 Act that the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge.

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

The absence of the Respondent

4. The Respondent has played no part in these proceedings at all. He did not attend the pre-trial review. He has not responded to any correspondence from the Tribunal or from the Applicant. He has not complied with any orders.

5. The Tribunal is satisfied that the Respondent was properly notified of the claim, the directions and the date of the hearing. They were sent by the

Tribunal on 19 November 2014 to two different addresses from which demands and other correspondence has been sent to the Applicant from or on behalf of the Respondent (241 Farnham Road, Slough and 19 Crendon Street, High Wycombe). One of the features of this case is that the Respondent Landlord has not complied with his general obligation under section 48 of the Landlord and Tenant Act 1987 to supply the Tenant with an address for service. We note also that on 1 December 2014, the Applicant sent his statement of case to a third address (78 Carrington Road, High Wycombe) which the Applicant states is the Respondent's usual or last known residence.

6. We are satisfied that the Respondent has been notified of the hearing or that reasonable steps have been taken to notify him of the hearing. We therefore decided to proceed with the hearing in his absence under rule 34 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules")

The Property and the Lease

7. The Property is a flat situated in a 3-storey building with commercial premises on the ground floor and originally two flats above. The long leasehold of the other original flat is owned by Connie Defelici, who is not a party to these proceedings. The Landlord has recently built a new flat on top of the building, known as 232c. The Tenant queries what proportion of the service charges the new flat is liable for. That is not a matter which is before us on this application and is not relevant here (since we have determined the level of service charges at zero), but it may become an important issue in future.

8. The London Borough of Croydon has served a notice on the Respondent in August 2014 under s.59 of the Building Act 1984 requiring the execution of works.

9. The Applicant has a long lease of the second-floor flat. The lease is dated 15 September 1982 and was granted by a previous freeholder to a predecessor in title of the Applicant for a term of 99 years from 25 March 1982.

10. There is a service charge clause in the lease requiring the Tenant to pay to the Landlord one-half of the expenses incurred in respect of various specified categories. Under the terms of the lease, the service charge is ascertained by a certificate signed by the Landlord's auditors or accountants or managing agents, but the certificate only needs to be supplied to the Tenant upon written request (1)(3)(ii)(a) and (c). The service charge year ends on 6 April of each year (b).

11. There is a provision in the same clause for service charges to be paid in advance on account in a half-yearly fixed sum of £37.50.

The Background

12. This is not the first time that this matter has come before this Tribunal. In 2012, the Tenant made a similar application with respect to the service charge years 2007-2012 (LON/00AH/LSC/2011/0871). At that time, he also made an application for the appointment of a manager under s24 of the Landlord and Tenant Act 1987.

13. The Landlord also failed to respond to that application or to attend the hearing. The Tribunal determined the relevant service charges as zero on the grounds that the Landlord had failed to comply with either the terms of the lease or the relevant statutory requirements.

14. The Tribunal in that case adjourned the s24 application and gave directions for its further consideration. The Tenant told us that no progress had been made with that application, but the application was not before us for consideration. The Tribunal in that earlier case also made an order under s20C and awarded the Tenant his costs. The Landlord made an unsuccessful application for permission to appeal to the Upper Tribunal.

15. We also heard from the Tenant that the purchase of the freehold by the current Landlord was allegedly in breach of section 5 of the Landlord and Tenant Act 1987 (tenants' rights of first refusal) and that a claim in that respect had been made in the county court, but the Tenants there were out of time.

This Application and the Applicant's Evidence

16. The trigger for this application was a letter dated 6 October 2014 sent on behalf of the Landlord to the Tenant's lender, Birmingham Midshires, demanding the sum of £8,699.38 ". The 6 October 2014 letter was forwarded to the Applicant by the lender and received by the Applicant on 13 October 2014.

17. The letter to the lender states that a letter of demand had been sent to the Tenant on 1 August 2014, but that he had neither paid nor responded. A purported copy of a letter dated 1 August 2014 was attached to the letter to the lender.

18. The letter dated 1 August is addressed to the Tenant but it was sent (if at all) to Flat 232C (not the Property). It begins "Dear Mrs Shah". There is no-one at the Property of that name. The letter goes on in the following terms:

> "We write to inform you that payment is long overdue for the charges listed below for April 2012, April 2013 and April 2014 amounting to **£8699.38.**"

19. The letter then sets out separately for each year:

Management charges	£1,250 per year
Service charges	£1,200 per year
Insurance	£396.41 per year (£406.56 for 2014)
Ground rent	£50 per year

20. There is no indication how the said sums are calculated nor any evidence as to what costs have been incurred by the Landlord.

21. After each year is listed in the letter there appears the words: "Total due April 2012", "Total due April 2013" and "Total due April 2014". Since, as we have set out above, the Lease provides only for the half-yearly sum of £37.50 in respect of on-account service charges in advance, and therefore the only time at which a larger amount may be demanded is after the conclusion of the relevant year, the only reasonable interpretation to place on this letter is that it is purporting to demand service charges for:

    (i) year ending 6 April 2012

    (ii) year ending 6 April 2013

    (iii) year ending 6 April 2014

22. In respect of each relevant year, the Tenant has written to the Landlord (9 April 2012, 8 April 2013, 7 April 2014) requesting under section 21 of the 1985 Act copies of:

    (i) Audited accounts

    (ii) Receipts and invoices

    (iii) Deduction of funds held not to be payable by this Tribunal

    (iv) Valid insurance certificate.

23. The Tenant told us that he had not received a reply to any of those requests.

24. The Applicant Tenant gave evidence, before us, us that he had not received the letter purportedly dated 1 August 2014 (or any other communication from the Landlord, or his agents, concerning service charges). He saw it for the first time when the lender forwarded to him the 6 October 2014 letter with its attachment. The Tenant told us that he had received no invoices, notices, demands, summaries, accounts or certificates in relation to the service charge years in question.

25. We believe the Tenant. He gave credible and coherent evidence and submissions. Also, as he pointed out to us, the Landlord has had ample opportunity to produce any other documents and has failed to do so.

26. There is therefore even less evidence in respect of these service charges than there was in the earlier case decided by this Tribunal in 2012. In that case, there were formal notices, invoices, breakdowns and statements. In this application there is only one letter – the letter dated 1 August 2014 – which simply states some global figures for each year.

27. The Tenant's evidence before us was that no works of repair or maintenance had been carried out at all at the Property. The Tenant says that the Landlord has diverted what is supposed to be the electricity supply for the common parts, in order to serve the new flat 232c.

Determination of Service Charges

28. We first had to consider which service charge years were within our jurisdiction to determine. The letter of 1 August 2014 purports to demand the sum of £2,896.41 in respect of service charges for the year ending 6 April 2012. The decision of this Tribunal dated 12 December 2012 in LON/00AH/LSC/2011/0871 was that "no service charges are payable by the Applicant to the Respondent for the years 2007-2012". That seems to indicate that the earlier decision of this Tribunal has already determined the service charges for the year ending 6 April 2012 at the sum of zero. The Applicant's application form before us does not seek a determination in respect of the year ending 6 April 2012, so that section of the Landlord's letter of 1 August 2014 does not fall to be considered by us.

29. The sums demanded in the 1 August 2014 letter for the year ended 6 April 2013 (£2,896.41) and for the year ended 6 April 2014 (£2,906.56) do fall within the current application.

30. The Applicant's application form in the current matter also seeks a determination of service charge in respect of the year ended 6 April 2015. We must dismiss that part of the application because (a) the Landlord does not appear to have demanded any service charges in respect of that year (b) the landlord would not yet be entitled to demand any service charges for that year other than two lots of £37.50 by way of on-account charges and (c) the year is question has not yet ended.

31. In relation to those years for which we do have jurisdiction, we have considered whether the service charges are payable (a) under the lease, (b) pursuant to the statutory requirements and (c) under the statutory reasonableness test.

Terms of the Lease

32. The lease requires that the service charges be ascertained and certified by a certificate and that such certificate must be sent to the Tenant upon written request. The tenant has made a written request for the certificates in respect of each relevant year and they have not been supplied. We have no evidence that the service charges have been ascertained by any such certificates. On the balance of probabilities, we find that there are no certificates and therefore that the service charges have not been validly demanded under the terms of the lease. Our conclusion is partially based on the fact that the service charges demanded for each relevant year for repairs and maintenance to the building and other services are in the same round amounts each year, making it unlikely they are the product of an auditor's certificate. As a result of this finding, they are not payable.

33. Our reasoning on that point does not apply to the on account service charges of £37.50 every half year since they are a fixed sum payable under the lease without demand and without the need for certification.

Statutory Requirements

34. In addition to the requirements under the lease, there are also statutory provisions which apply to these service charges. If the Tenant makes a written request for a summary of relevant costs, then the service charges are not payable (s212A of the 1985 Act) until the Landlord supplies one together with an accountant's certificate, a statement of account and a summary of rights and obligations (s21 of the 1985 Act). The Tenant did make such a request, as noted above, and the Landlord has failed to supply the requisite documents. The Tenant is therefore entitled to withhold the service charges claimed for that reason, even if they were recoverable under the Lease.

35. In addition, service charges are regarded under section 48 of the Landlord and Tenant Act 1987 as being not due for as long as the demand does not include an address for service on the landlord in England and Wales. The letter of 1 August 2014 did not contain any such information. The service charge demanded is therefore not due for that reason as well.

36. A question arises as to whether any of the statutory requirement apply to the fixed on-account element of the service charges. Service charges are defined in s18 of the 1985 Act as variable charges. Fixed charges are not included within the definition and the service charge provisions of the 1985 Act do not apply to them. In our judgment, the proper test is whether the on-account sum is a fixed sum in its own right, or whether it is a part of a larger variable sum. Since it is subject to a later balancing exercise once the full service charges are ascertained, we have decided that the fixed element of the on-account service charges is part of a service charge within the meaning of the 1985 Act.

Reasonableness

37. Even if, contrary to our decisions above, the service charges are payable under the terms of the lease or may not be withheld under the statutory requirements considered above, we have decided that the service charges demanded for the relevant years fail the reasonableness test in section 19 of the 1985 Act in their entirety, because there is no evidence that the Landlord has incurred any costs at all in connection with any of the activities for which service charges may be recovered under the lease. The Tenant relies additionally on the Council's Building Act notice (mentioned above) to demonstrate that no essential repair works have been done. There are no accounts, no receipts, no invoices, no breakdown of the amounts, no certificates of insurance. It is suspicious that the service charges (which are supposed to be an actual reflection of the expenditure on the property) are claimed at exactly the same level (£1,200) every year for the two years in question. There is no evidence that any management of the property has taken place so as to justify the figure claimed of £1,250 per year or anything at all.

38. For those reasons, we have decided that no relevant costs have been reasonably incurred in the relevant years and therefore no service charges,

management fees or insurance premiums are payable by the Tenant in respect of the years ending 6 April 2013 and 6 April 2014.

39. There is an email dated 2 November 2014 from Connie Defelici (the leaseholder of the other flat) stating that service charges in respect of that flat (for the same period – 2012-2014) had been demanded in the sum of £3,000. It is not clear from the email whether there is a disparity in the amounts charged or whether that other tenant had paid of some of the service charges.

Application under s.20C and refund of fees

40. The Applicant has made an application under rule 13(1)(b) of the 2013 Rules for an order for costs. In our judgment, the Respondent's conduct of these proceedings has been unreasonable. His demand of large sums directly from the Applicant's lender in an attempt to get away with a quick and undeserved payment, together with the Respondent's failure to respond to correspondence, comply with directions or attend hearings demonstrates nothing but contempt for the justice system and for the Applicant's rights as a tenant. The Applicant has asked to be reimbursed for his application fee (£250), the hearing fee (£190) and his costs of couriers, photocopying, postage and travel (£300) making a total of £740. We do not have jurisdiction to deal with his claim for damages in respect of a carpet allegedly damaged by some builders. We therefore make a costs order in the sum of £740 payable within 14 days.

41. The Applicant also applied for an order under section 20C of the 1985 Act prohibiting the Respondent from adding his costs incurred in these proceedings to the service charge. Given the Respondent's lack of participation in these proceedings, it seems unlikely that he has incurred any costs, let alone any which may be recovered through the service charges. However, he may attempt to recover costs. The Tribunal is satisfied, for the reasons already given, that it is just and equitable to make such an order.

Name: **Judge T Cowen**
Mr Cartwright JP, FRICS **Date:** **17 March 2015**

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).