

10487



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

Case Reference : **LON/00BE/LSC/2013/0583**

Property : **Basement Flat at 99 Kennington
Park Road, London SE11 4JJ**

Applicant : **Mr Zvi Benveniste**

Representative : **Circle Residential Management
Limited**

Respondent : **Mr Paul Taylor (basement flat)**

Representative : **None**

Type of Application : **Liability to pay service charges**

Tribunal Members : **Judge Pittaway
Mr D Jagger**
**Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

Date of Decision : **9 December 2014**

DECISION

DECISION

The estimated service charge for the year 2013 of £960 in respect of the basement flat is reasonable.

Background

1. Case reference LON/00BE/LSC/2013/0583 is an application as to liability to pay and reasonableness of budgeted services charges in respect of Mr Taylor's basement flat only. By Further Directions of 12 February 2014 (the "February Directions") the case was joined with another case relating to all the flats in 99 Kennington Park Road, which case has now been determined, so that the only respondent to this application is Mr Taylor.
2. Directions were issued on various occasions, with the February Directions setting out the documents that the parties should exchange to prepare their respective statements of case and providing for delivery of bundles to the Tribunal in readiness for a Hearing.
3. The February Directions warned the respondents that failure to advise the Tribunal that they wished to prepare a statement of case or participate in the proceedings by a specified date would bar that respondent from taking further part in the proceedings.
4. The February Directions indicated that the application would be determined without a Hearing unless a hearing was requested. No hearing has been requested.
5. By reason of Mr Taylor's ill health the tribunal agreed to a stay of proceedings for six months until 5 September 2014 and on 23 October 2014 wrote to the parties amending the dates of the February Directions so that Mr Taylor had until 4 November to inform the tribunal that he wished to prepare a statement of case and until 10 November to prepare that case. Mr Taylor did not communicate with the tribunal nor provide a statement of case.
6. The applicant having already provided its bundle to the tribunal on 14 October 2013 the directions invited it to provide any supplemental bundle by 28 November 2014. The applicant did not provide a supplemental case but wrote to the tribunal on 11 November 2014.

Evidence

1. From the Applicant's statement of case
 - 1.1. the application relates to interim service charge in the sum of £960 for the service charge year ending 31 December 2013;
 - 1.2. a service charge budget and breakdown has been provided;

- 1.3. there was no evidence before the tribunal that any other tenant of 99 Kennington Park Road had disputed the reasonableness of the sums;
- 1.4. there was no evidence that Mr Taylor has disputed the amount.
2. The tribunal have not had regard to the applicant's letter to the tribunal of 11 November 2014 as there was no evidence before it that the letter had been copied to the respondent.
3. Mr Taylor had not provided the tribunal with any evidence.

Reasons for the Tribunal's decision

1. There was no issue of liability to pay the service charge before the tribunal who therefore limited their consideration to whether the amount demanded was reasonable.
2. It is apparent from the applicant's statement of case that the budget that is the basis for the demand is based upon the previous year's actual service charge expenditure and in the absence of any evidence to the contrary the tribunal finds that to be reasonable basis for calculating the interim service charge.
3. The tribunal notes that it is an estimate and that it will be open to any person to challenge the actual service charge for the year in question if they consider it to be unreasonable.
4. The relevant law is copied in the Appendix to this decision.

Name: Judge Pittaway

Date: 9 December 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.