



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

<b>Case reference</b>	:	<b>LON/00AH/LSC/2015/0330</b>
<b>Property</b>	:	<b>230A London Road, Croydon, Surrey, CR0 2TF</b>
<b>Applicant</b>	:	<b>Ms Karen Sheila Briscoe</b>
<b>Representative</b>	:	<b>In person and assisted by Ms Sheila Corner</b>
<b>Respondent</b>	:	<b>Chiltern Property Limited</b>
<b>Representative</b>	:	<b>Ms Mardner of Counsel instructed by Albus Law Solicitors</b>
<b>Type of application</b>	:	<b>For the determination of the reasonableness of and the liability to pay a service charge</b>
<b>Tribunal members</b>	:	<b>Judge Evis Samupfonda Mr M Taylor FRICS</b>
<b>Date and venue of hearing</b>	:	<b>3<sup>rd</sup> December 2015 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>22<sup>nd</sup> December 2015</b>

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sums claimed in respect of management fees in respect of the service charges for the years 2011, 2012, 2013 and 2014 are not reasonable and not payable.
- (2) The tribunal determines that the sum of £155.42 per year in respect of the insurance was payable by the Applicant for the year 2013/14 and 2014/15. The Applicant is not liable to pay service charges in respect of insurance for the year 2012/13.
- (3) The tribunal determines that the amounts of £600 each year claimed in respect of service charges for the years 2012, 2013 and 2014 are not reasonable and/or payable by the Applicant.
- (4) The tribunal makes the determinations as set out under the various headings in this Decision.
- (5) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **The application**

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 Applicant in respect of the service charge years 2011, 2012, 2013 and 2014.

### **The hearing**

2. The Applicant appeared in person and was assisted by her friend Ms Corner at the hearing and the Respondent did not attend but was represented by Ms Mardner of Counsel instructed by Albus Law solicitors. Mr Yellopa, solicitor accompanied her.
3. The start of the hearing was delayed while Ms Mardner took instructions as she informed the tribunal that she had been instructed late the day before the hearing.

### **The background**

4. The property which is the subject of this application is a 2 bedroom self-contained flat above commercial premises. There are 3 flats in the Building.

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. The Applicant 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 issues**

7. At the start of the hearing the parties and the tribunal identified the relevant issues for determination as the payability and/or reasonableness of service charges relating to:
  - (i) Management fees - £1,200 for the year 2011;
  - (ii) Insurance - £396.41, Management fees - £1,250 and Service Charges - £600 for the year 2012;
  - (iii) Insurance - £396.41, Management fees - £1,250 and Service Charges - £600 for the year 2013;
  - (iv) Insurance - £406.56, Management fees - £1,250 and Service Charges - £600 for the year 2014;
  - (v) Whether s20B of the Act applied and
  - (vi) Whether an order should be made under s20C of the Act.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Management fees**

9. Ms Corner informed the tribunal that as far as Ms Briscoe was concerned, there were no management functions carried out at the Building. The residents provide the cleaning services and lighting for the common parts. She added that the Respondent has not produced certified accounts in accordance with the terms of the lease. She stated that the one and only demand for payment was that made by the letter dated 9 October 2014 and Ms Briscoe did not receive a demand for payment dated 1 August 2014 as alleged by the Respondent.

10. Ms Mardner submitted that there must have been some management functions carried out over the years. If the Applicant was so dissatisfied there is no evidence of any complaints having been made. Ms Mardner acknowledged that there were no invoices to support the demands made nor was there any explanation as to the breakdown of the costs claimed. She informed the tribunal that the Respondent did not belong to any professional management body and had not engaged a professional managing agent.

### **The tribunal's decision**

11. The tribunal determined that none of the sums claimed in respect of management fees in every year in question were payable.

### **Reasons for the tribunal's decision**

12. The tribunal considered very carefully both the oral and documentary evidence. It was not disputed that the Respondent was entitled under the terms of the lease to recover the cost of managing the Building through the service charge. The Respondent put before the tribunal the demand for payment and certification of expenditure in support of its claim. Such information, without any explanation as to how the costs were expended did not assist the tribunal in its function of determining whether costs had been reasonably incurred. What the tribunal had been provided with was no more than mere assertions and this was simply not enough. In this case, there was absolutely no evidence provided by the Respondent to substantiate or support its assertions that costs had been incurred in respect of the management of the Building. The tribunal was not provided with any evidence of what services had been provided, when and by whom. There was no evidence to demonstrate that the Respondent had engaged any person or business to provide management services. In the circumstances the tribunal could not be satisfied that costs had been reasonably incurred in respect of managing the Building and therefore disallowed the costs claimed for management in all the years in question.

### **Insurance**

13. Ms Corner explained that they had requested copies of the insurance policies several times. They were provided copies for the years 2013/14 and 2014/15 only. She added that from these, it was not readily clear how the amount was allocated between the occupiers. They queried the amounts claimed further because in the year 2012 an invoice dated 12 April 2012 demanded a payment of £397.91 whereas the certified amount was said to be £396.41. Similar discrepancies also arose in 2013/14 when the amount demanded was £396.41 and amount certified was £397.91.

Ms Mardner could not provide any explanation as to how the cost of insurance was allocated between the occupiers and how the discrepancies arose

### **The tribunal's decision**

14. The tribunal determined that the sums claimed in respect of the insurance for the year 2012/13 is not recoverable for the reasons set out below. For the years 2013/14 and 2014/15, the tribunal determined that the Applicant is liable to pay £155.42 in respect of each year.

### **Reasons for the tribunal's decision**

15. The Respondent claimed £396.41 for the year 2012/13. The tribunal disallowed the Respondent's claim in respect of the insurance for the year 2012/13 because there was no evidence put before the tribunal to show that the Building was insured in this period. Therefore the tribunal could not determine what costs had been incurred and whether they had had been reasonably incurred. Furthermore, had such evidence been provided, the tribunal would have disallowed the claim by virtue of Section 20B of the Act for the reasons set out below.

Turning now to the years 2013/14 and 2014/15, the tribunal had before it an insurance policy by Zurich for £1,865.60 for the year 2013 and £1,810.20 for the year 2014. The Applicant's contribution was said to be £396.41 for 2013/14 and £406.52 for 2014/15. The schedule for 2013/14 showed there to be 10 flats in the Building. However, from the description given and from the subsequent policy there are 12 flats mentioned. The schedules refer to what appears to be a Block policy covering a terrace of 226, 228, 230 and 232 London Road that includes a supermarket and a motor accessories shop. Whilst the lease for 230a London Road includes at clause 2 (3) (i) a liability for a one third share it is not clear as to how the sums claimed have been arrived at. Using our knowledge and experience, we consider it unlikely that what in our view appears to be a reasonable level of premium would cover both the 12 flats plus the commercial premises. In the absence of any explanation as to how the insurance costs were allocated between the occupants, the tribunal adopted an apportionment between the flats only at 1/12 as it considered that to be a reasonable method to adopt. Thus the tribunal determined that the amount that is reasonable and therefore payable by the Applicant in respect of the insurance for the years 2012/13 and 2013/14 was £155.42 per year.

### **Service Charges**

16. The Respondent claimed £600 in respect of service charges for the years 2012 and 2013. Ms Corner made the same arguments in terms of lack of services and lack of information explaining how the costs were incurred. The Respondent produced no evidence in support of the claim. In the absence of any evidence to substantiate how the costs were incurred the tribunal was not satisfied that the amount claimed was reasonable and/or payable.

### **Section 20B**

17. As outlined below, Section 20 B of the Act provides that costs incurred are recoverable when the demand for payment is made within 18 months of the costs being incurred. Ms Briscoe asserted that the demand for payment was made by a letter dated 9 October 2014 and this letter referred to an earlier letter of demand dated 1 August 2014, which she says she never received. She was adamant that the only demand for payment of service charges was that made by the letter dated 9 October 2014. She highlighted the fact that attached to this demand were a number of invoices for ground rent all which were dated 9 October 2014 and therefore could not have been sent under cover of the letter dated 1 August 2014.

Ms Mardner could not explain why all the demands for ground rent were dated 9 October 2014. She said that the Respondent's demand for payment was made in the letter dated 1 August 2014 and was therefore within the 18 months. She stated that there was no evidence available to substantiate this assertion.

### **The tribunal's decision**

18. The tribunal determined that the Respondent was not entitled to recover the service charges for the years 2011/12 and 2012/13 by virtue of section 20B of the Act.

### **Reasons for the tribunal's decision**

19. Neither party could explain when the financial year ran. The certification of the annual service charge dated 1 April 2013 and 1 April 2012 produced by the Respondent refers to "information for the year from March 31st to 29th September." These certificates certifying the costs incurred caused some concern because they were written on the Respondent's letter headed paper and signed by an unidentifiable individual whose professional background was undisclosed. There were discrepancies in the amounts and items certified when compared to those claimed in the supporting invoices. By way of example the certificate dated 1st April 2012 identified management costs of £1250 and the invoice dated 12 April 2012 claimed management fees of £1200.

The tribunal looked to the lease to ascertain the financial year and according to clause 2 (3) (f) (ii), the financial year runs from 7 April to 6 April. Therefore for the purposes of determining the 18 months due date under Section 20B of the Act, the tribunal identified that for the costs incurred in each financial year to be payable, the demands for payment must be made by October the following year. The tribunal was informed that the letter dated 1 August 2014 served as the demand for payment of all service charges due from 2011 to 2014. Other than this date stamped letter, the Respondent could not provide any evidence demonstrating proof of posting and evidence to show when in fact it was posted. The tribunal rejected the Respondent's assertions that the letter was posted in August 2014. That assertion was in the tribunal's view an attempt by the Respondent to circumvent the provisions of Section 20B of the Act. The tribunal preferred Ms Briscoe's evidence that she did not receive the letter dated 1 August 2014 at all and that the demand for payment was made by the letter dated 9 October 2014 that she acknowledged receiving. The tribunal found her evidence more credible because this letter of

9 October 2014 attached to it the Respondent's demands for ground rent also dated 9 October 2014.

Thus by virtue of Section 20B, the demand for payments in respect of the service charge years 2011 and 2012 are out of time and the amounts claimed are not payable. In the circumstance the Respondent is entitled to recover the costs determined by the tribunal to be reasonably incurred and payable in the service charge year 2013/13 and 2014/15 only.

### **Reconciliation of Service Charge Account**

20. The tribunal was referred to the letter dated 28 January 2011 from Santander Bank confirming that the bank had paid £1,228.73 to the Respondent in respect of unpaid service charges. Ms Corner also identified 11 monthly direct debit payments of £100 made by Ms Briscoe between January- November 2011. Therefore in 2011 Ms Briscoe paid £2,328.78 towards the service charge. Ms Corner stated that the Respondent informed Santander that there were unpaid service charges of £8106.88 for the years 2011, 12, 13 and 14. The Respondent did not reflect the earlier payments made in 2011 in the claim made to the bank and the bank paid £8106.88 in October 2014. Ms Corner said that Ms Briscoe wrote to the Respondent complaining about these matters in a letter dated 18 January 2015 but received no reply.
21. Curiously the tribunal observed that by letter dated 17 November 2014 from the Respondent to Ms Briscoe is marked " very urgent reminder of ground rent/management, insurance charges arrears" and the Respondent demanded the sum of £6591.64 in respect of unpaid service charges despite the earlier payment made by Santander of £8106.88 which is a further demonstration of the Respondent's haphazard approach.
22. In the light of the tribunal's findings and in the light of the payments made by Ms Briscoe and Santander Bank, the parties will have to undertake a reconciliation exercise and adjustments made to the service charge account to reflect these.

### **Application under s.20C**

23. At the end of the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Evis Samupfonda      **Date:** 22 December 2015

## **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.



## **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.