

10904



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

Case reference : **LON/00AW/LSC/2015/0131 and
0132 and 0133**

Property : **(1) Flat 2, 6 Cheyne Gardens,
(2) Flat 5, 6 Cheyne Gardens,
(3) Flat, 2 Cheyne Gardens,
London SW3 5QU**

Applicant : **5-11 Cheyne Gardens RTM
Company Limited**

Representative : **Susan Metcalfe, Residential
Property Management Limited**

Respondent : **(1) Chagorros S.A.
(2) Alireza Ittihadieh
(3) Irja Brant**

Representative : **Mischon de Reya**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Judge Robert Latham
Mr Hugh Geddes RIBA MRTPI
Ms Sue Wilby**

**Date and venue of
hearing** : **14 May 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **14 May 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the following sums are payable by each of the Respondents in respect of the service charge of £7,800 incurred by the Applicant in respect of legal fees:
 - (a) Chogorros S.A.: £468 (6%);
 - (b) Alireza Ittihadieh: £429 (5.5%);
 - (c) Ilja Brant: £468 (6%).
- (2) The tribunal determines that each of the Respondents shall pay the Applicant £65 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicants in respect of legal fees of £7,800. The Applicant issued a demand in respect of the said charge on 21 December 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. On 22 December 2014, the Applicant issued the three Respondents a service charge demand in the sums of £468, £429 and £468 in respect of legal fees incurred in defending claims made by Mr Alireza Ittihadieh. In October 2014, Alireza Ittihadieh, tenant of Flat 5, 6 Cheyne Gardens, issued through his solicitors, notice of his intention to sue the RTM company, its directors and its company secretary for racial discrimination, harassment and victimisation. The background to this dispute is said to be works which he had executed without the requisite consent to Flat 2, 6 Cheyne Gardens. The Applicant asserts that the RTM company's lawyers have, in correspondence (and subsequently in the High Court), disproved every alleged act and incident advanced in support of the claim.
4. The management company have also provided over 400 pages of documents in response to an application made by Mr Ittihadiah pursuant to the Data Protection Act 1988. The fees incurred by their lawyers came to £7,800 (inc VAT). All the tenants have been billed for

their relevant proportion of the service charge. These Respondents are the only ones who have not paid.

5. On 23 March 2015, the Tribunal gave Directions. The Procedural Judge directed that the three applications be consolidated and that the matter be determined on the papers. The Applicant has not served its statement of case as required by the Directions.
6. On 8 May, the case was reviewed by a Procedural Judge. She directed that the matter be determined in the week commencing 11 May and that any party who wished to make any written representations, should do so by 13 May.
7. By letters dated 11 and 12 May, Mischon de Reya, Solicitors for the three Respondents, have made written representations. The Applicant has also made representations by letters dated 11 and 12 May. The Respondents suggest that the Applicant's account is "a gross oversimplification of a long running dispute". We understand that on 5 May 2015, HHJ Seymour QC, sitting as a judge of the High Court, dismissed Mr Ittihadieh's claims and refused him permission to appeal.

The tribunal's determination

8. The Respondents raise two issues:
 - (i) Is the Applicant entitled to claim the sums demanded pursuant to the terms of the Respondents' leases?
 - (ii) Has the Applicant discharged its statutory obligations in respect of the payment of the charges?
9. The Applicant relies on the Fourth Schedule of the leases which relate to the service charge:
 - (i) By paragraph 2, the tenants are required to pay a service charge equal to their fair and proper proportion attributable to the demised premises of the cost of the services specified in the schedule.
 - (ii) Paragraph 9 provides that it is intended that all costs, expenses and liabilities incurred by the Lessor in relation to the Building shall be fully reimbursed by way of the service charge.
 - (iii) Paragraph 12 includes: "General management of the Building including ... meeting all other expenses reasonably and properly incurred in connection with the Building including fees and disbursements charged by any solicitor or other professional person in ... enforcing any breach of covenant".

10. The tribunal is satisfied that the sums demanded are payable pursuant to this Schedule. It is not for this tribunal to form a view on the merits of the discrimination claims. The issue is rather whether these expenses have been properly incurred by Applicant in managing the building.
11. The tribunal is also satisfied that these are service charges as defined by section 18(1) of the Act which may properly be passed on to the tenants through the service charge accounts. They are not administration charges.
12. The tribunal has been provided with a copy of the demands dated 22 December 2014. Each is accompanied by the Summary of Tenants' Rights and Obligations" as required by Section 21B of the Act.
13. The tribunal is further satisfied that it is appropriate to order that each Respondent should refund the fee of £65 paid by the Applicant in respect of each of these applications within 28 days of the date of this decision.

Judge Robert Latham

14 May 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.