



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

Case Reference	: LON/00AU/LSC/2016/0030 and 0126
Property	: 53 and 55 Wyatt Road, Highbury, London N5 2JU
Tenants	: Linda Mooney (No 53) and Suzanne Mooney (No 55)
Representative	Suzanne Mooney on behalf of herself and Linda Mooney
Landlord	: London Borough of Islington
Representative	: Mr Sachin Israni-Bhatia, litigation lawyer
Type of Application	: Liability to pay service charges
Tribunal Members	: Judge Adrian Jack, Professional Member Andrew Lewicki FRICS
Date and venue of hearing	: 21 st July 2016 10 Alfred Place, London WC1E 7LR
Date of Decision	: 12 th August 2016

DECISION

Background

1. By a claim issued in the County Court Money Claims Centre on 14th April 2015 under action no B17YX179 the landlord sought to recover £7,397.41 from Ms Susanne Mooney in respect of ground rent and service charges plus costs in respect of 55 Wyatt Road, Highbury over the period 2007-08 to 2013-14. By a second claim issued in the County Court Business Centre on 19th June 2015 under action no B9QZ95P7 the landlord sought to recover a further £871.36 against Ms Susanne Mooney in respect of 2014-15.

2. By Order of District Judge Manners on 8th January 2016, these two claims were consolidated. Judgment was given for the landlord in the sum of £3,928.38 with the remainder of the claims transferred to this Tribunal. The Tribunal gave directions on 28th January 2016.
3. By an application received by the Tribunal on 21st March 2016, Linda Mooney sought determination of her liability for service charges in the years 2010-11 to 2014-15. The Tribunal on 30th March 2016 gave directions for this case to be heard at the same time as the other matter.

The amounts claimed

4. The leases are in identical form, save that No 53 is a one-bedroom flat and pays a lower percentage of service charges than No 55, which is a two-bedroom flat. They provide for the making of interim service charge demands with balancing payments once the final accounts are obtained. In the County Court actions, the amounts claimed in 2007-08, 2008-09 and 2009-10 were all based on estimates. By the time the matter came before us, the landlord had produced final accounts and it is these on which we adjudicated with the full agreement of the parties.
5. As we observed at the hearing, some at least of the sums claimed appear to be statute-barred. The leases reserve the service charges as rent, so that the six year limitation period in section 19 of the Limitation Act 1980 potentially applies. The limitation defence has not been pleaded, as it must be if it is to be considered. Whether an amendment to her defence at such a late stage is appropriate or possible, is a matter for the County Court: see *Kettman v Hansel Properties Ltd* [1989] AC 189.
6. The figures claimed by the landlord in the two County Court actions and the basis on which judgment for £3,581.61 was entered are as follows (P meaning payment and C a credit, the starred figure being a charge):

Description	Invoice	Payment	Outstanding
2009 Major works	£1,929.97	(£1,450.17) P	£479.80
2007 Estimate	793.67	(500.67) P	293.00
2008 Estimate	969.83	nil	969.83
2009 Estimate	920.47	(28.75) C	891.72
2010 Final	684.99	(32.20) C	652.79
2011 Final	529.06	nil	529.06
2012 Final	976.29	20.00* (10.00) P	986.29
2013 Final	1,185.52	(50.77) C (10.00) P	1,124.75
Total	£7,989.80	(£2,062.56)	£5,927.24

7. The amounts disputed in the tenant's defence were:

2007	Caretaking	£345.68
2008	Caretaking	455.09
2009-10	Caretaking	148.30
2010-11	Caretaking	147.96
2011-12	Caretaking	394.56
	Communal electrics	50.00
2012-13	Caretaking	394.56
	Communal electrics	99.45
2013-14	Caretaking	203.08
	Communal electrics	106.95
Total		£2,345.63

8. £5,927.24 less £2,345.63 gave an undisputed figure of £3,581.61. As regards 2014, the undisputed amounts came to £346.77. The total judgment granted by the District Judge was £3,928.38.

9. Before us, the amounts claimed by the landlord were different (bundle pages 163ff). It was these figures on which we tried the matter.

Description	Original	Actual	Variance
2009 Major works	£1,929.97	£1,929.97	nil
2007 Final	793.67	683.66	(110.01)
2008 Final	969.83	890.36	(79.47)
2009 Final	920.47	814.05	(106.42)
2010 Final	815.77	655.08	(160.69)
2011 Final	689.75	977.87	288.12
2012 Final	688.17	959.70	271.53
2013 Final	913.99	798.17	(115.82)
2014 Final	987.18	830.87	(156.31)

10. The items challenged by the tenants were few. The figures they advanced are in the “conceded” column.

Description	Estimated	Actual	Conceded
2009 Major works	£1,929.97	£1,929.97	£1,929.97
2007 Final			
Caretaking	345.68	187.94	86.88
Grounds maintenance	28.38	66.84	nil
2008 Final			
Block repairs	40.22	231.76	100.00
Caretaking	455.09	197.47	86.88
Grounds maintenance	43.47	40.15	nil
2009 Final			
Caretaking		148.30	86.88
Communal lighting		48.61	33.33
Grounds maintenance		56.39	nil
2010 Final			
Caretaking		147.96	86.88
Communal lighting		53.24	33.33
2011 Final			
Caretaking	148.30	394.56	86.88
Communal electric	nil	50.00	33.33
Grounds maintenance	43.72	33.99	nil
TV maintenance	nil	27.67	nil
2012 Final			
Caretaking	147.96	394.56	86.88
Communal electric	nil	99.45	33.33
Grounds maintenance	32.90	29.27	nil
2013 Final			
Caretaking	394.56	203.08	86.88
Communal electric	50.00	106.95	33.33
Grounds maintenance	44.19	22.05	nil
2014 Final			
Block repairs	111.57	321.81	150.00
Caretaking	414.29	205.18	86.88
Grounds maintenance	29.27	18.47	nil

Evidence, discussion and conclusions

11. We heard evidence on behalf of the landlord from Carol Sloman, a quality assurance officer, and Richard Powell, a special projects officer. Both were cross-examined by Ms Suzanne Mooney.
12. Ms Sloman said that she inspected the property once a month. There she would fill out a sheet recording the quality of the cleaning carried out by the caretaker. Some of the sheets were in evidence. A marking scheme of A, B, C etc had been devised and caretakers were required to obtain 80 per cent of available marks. This could be achieved by having mostly A's and B's with one or two C's. It was rare, she said, for a caretaker to score a D. 90 per cent of inspections were satisfactory.
13. Mr Powell explained that caretaking costs were calculated across the housing office area, in this case Hampstead East. He showed a template (bundle page 290), where the total cost of caretaking was £3,562,331.94. The percentage of that spent on the block in question was 0.00002565, which was the equivalent of 35.81 hours per annum. The hourly rate was £25.52. Mr Powell, when preparing for the current case, discovered that the figures for caretaking in the column marked "estimated" in the table in paragraph 10 above had been incorrectly calculated. As a result he recalculated them and produced the figures in the column marked "actual".
14. It is of course regrettable that these figures for caretaking were not correct in the first place, but we are satisfied that they have now been correctly calculated. Ms Mooney suggested that £25.52 as an hourly rate was too high, but one had to remember that this figure includes sums for employer's national insurance, management time, equipment, cleaning materials, training and cover for holiday and sickness. In our judgment, £25.52 is a reasonable figure for an hourly rate.
15. Ms Mooney complained that a tenant upstairs from herself and her sister kept an aggressive dog, however this does not seem to us to be relevant to the quality of caretaking. It is a matter of estate management, but the tenants raised no complaint about the amounts charged under that head. Likewise she complained that a gate and a fence had been damaged. However, she was not charged for these matters, so again at most this is a matter of the quality of the estate management.
16. We are satisfied that the landlord had a reasonable system in place for ensuring that the caretakers carried out their duties adequately. We consider that the amount now claimed for around an hour's work a week is reasonable. Accordingly we disallow nothing in respect of caretaking.
17. As to grounds maintenance, Ms Mooney's case was that only negligible amounts of grounds maintenance had been done. She herself, she said, had only very rarely seen a groundsman. She was, however, in the initial years working and latterly resident abroad, so we do not consider

that this undermines the landlord's case. She said that her mother had cut back the plants in front of No 53. Again, however, this does not show that no gardening at all was done. It is apparent from the twelve photographs on an A3 colour photocopy that some gardening was being done. The tenants' purpose in producing the photographs was to show that the landlord had not removed débris left by other tenants in the garden. However, the removal of such items is not for the gardening account. The amounts claimed by the landlord for gardening are modest and reflect the modest amount of work actually done. We disallow nothing.

18. The amounts charged for electricity in 2012 and 2013 appear to be high. In 2011, the figure had been capped by the landlord at £50. Earlier years reflect borough-wide billing and cannot in our judgment be criticised. In relation to the much higher 2012 and 2013 figures, Mr Powell has produced the bills from the electricity supplier, which show the amounts charged. It is a concern that the amount is so large, but neither party was able to produce any evidence as to why the bills should be so high, still less to show some impropriety on the landlord's behalf contributing the high readings. Thus we cannot treat the landlord as being in some way acting unreasonably in seeking to recover the actual cost. The landlord has shown its expenditure on electricity, so the amount claimed has in our judgment been justified; in consequence we can disallow nothing.
19. The tenants made no attempt to justify the £100 figure they advanced for block repairs in 2008 and the £150 figure for block repairs in 2014. The landlord is entitled to the actual cost, so we do not reduce the figure charged. The TV maintenance sum in 2011 seems modest and we do not disallow that either.
20. Accordingly, we declare that the figures in the actual column of the table in paragraph 9 above are payable by Ms Suzanne Mooney. The same applies to Ms Linda Mooney, save that she raises issues solely in relation to 2010-11 to 2014-15, and is charged the percentage appropriate to a one bedroom flat.

Costs

21. The Tribunal has a discretion as to who ought to pay the fees payable to the Tribunal. These comprise a hearing fee of £190 paid by the landlord and the fee for the application to the Tribunal by Ms Linda Mooney of £125.00.
22. We have in fact disallowed nothing. However, this results from the landlord recalculating very substantially the figures for caretaking. Further the landlord was uncooperative with the tenants. This should be reflected in our costs order. In our judgment, the costs should lie where they fall. We therefore make no order in respect of the fees payable to the Tribunal.
23. The costs in the County Court are matters for the County Court.

DECISION

(a) The sums due by Ms Suzanne Mooney in respect of 55 Wyatt Rd are:

2009 Major works	£1,929.97
2007 Final	683.66
2008 Final	890.36
2009 Final	814.05
2010 Final	655.08
2011 Final	977.87
2012 Final	959.70
2013 Final	798.17
2014 Final	830.87

(b) The sums due by Ms Linda Mooney in respect of 53 Wyatt Rd for 2010 Final to 2014 Final are the same, but reduced to reflect the fact that she has a one bedroom flat.

(c) The Tribunal makes no order for costs.

(d) The claims against Ms Suzanne Mooney in respect of 55 Wyatt Rd are remitted to the County Court sitting at Clerkenwell and Shoreditch.

Name: Adrian Jack

Date: 12th August 2016

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.