



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

Case reference : LON/00AZ/LSC/2016/0174

Property : Flat 3, Grover Court, Loampit Hill,
London, SE13 7ST

Applicant : Grover Court Flat Owners Ltd

Representative : Hampton Wick Estates Ltd,
Managing Agent

Respondent : Mr Abishek Jain

Representative : Hanson Young, Solicitors

Type of application : For the determination of the
reasonableness of and the liability
to pay service and administration
charges

Tribunal members : Judge I Mohabir
Mr K Cartwright FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 12 September 2016

DECISION

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge years ended 23 June 2012 and 2013 and 2010/11 respectively.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YM27118. The claim was transferred to the Willesden County Court and then in turn transferred to this tribunal, by order of District Judge Bloom on 30 October 2014.
3. The total estimated service charges for the year ended 23 June 2012 and 2013 for Grover Court was £71,400 and £69,770, of which a service charge contribution of £1,400 and £1,368.04 respectively is claimed by the Applicant from the Respondent (“the service charges”). A breakdown of the estimates and the heads of expenditure can be found at pages 30 and 38 of the hearing bundle.
4. The claim also includes an addition amount of £2,460.31 demanded in 2010/11, being legal and/or service charge costs (“the administration charge”).
5. An oral case management hearing took place on 17 May 2016, which the Respondent did not attend nor was he represented. Indeed, the Respondent has not complied with any of the Tribunal’s Directions dated 17 May 2016 or participated in these proceedings at all.
6. At the case management hearing, the Applicant agreed to limit the issues and the claim in this case to those amounts set out at paragraphs 3 and 4 above because the service charge arrears claimed in respect of earlier years up to 23 June 2011 had already been the subject matter of judicial determination and, therefore payable by the Respondent.
7. The relevant legal provisions are set out in the Appendix to this decision.

Decision

8. The Tribunal’s determination took place on 12 September 2016. In accordance with the Tribunal’s Directions, there was no oral hearing. The Tribunal’s determination was based solely on the extensive documentary filed by the Applicant.

9. As stated earlier, the Respondent has not complied with any of the Tribunal's Directions and has, therefore, not filed any evidence in opposition to the claim.

Procedural

10. The Tribunal's Directions directed that this case be determined solely on the basis of the statements of the statements of case and documentary evidence filed and served by the parties. A direction was also given that if either party required an oral hearing, a request to the Tribunal had to be made no later than 12 July 2016. Neither party made such a request.
11. On 5 September 2016, the Tribunal received an e-mail from the Respondent's solicitors, Hanson Young, somewhat confusingly stating that their client would not be able to attend the hearing because he was on religious pilgrimage from 5 to 30 September 2016. The e-mail also referred to the Respondent's wish to attend the hearing and for the matter to be re-listed.
12. By a letter also dated 5 September 2016, the Tribunal informed Hanson Young that there was in fact no hearing and the matter would proceed as a "paper determination".
13. To the extent that the e-mail from the Respondent's solicitors dated 5 September 2016 amounts to an application to adjourn this determination and to request a hearing, it is refused for the following reasons:
 - (a) the application(s) have not been made promptly or in a timely manner. The Tribunal was satisfied, on balance, that the Respondent's religious pilgrimage would have been contemplated and/or arranged some time ago and he failed to make the application(s) at that time.
 - (b) no evidence has been produced of the Respondent's travel abroad.
 - (c) importantly, given the Respondent's failure to comply with any of the Tribunal's directions or participate in these proceedings at all, to grant the application(s) would result in prejudice and/or procedural unfairness to the Applicant. In addition, in the circumstances, the Respondent's applications(s) could be viewed as being an abuse of process.
14. The Tribunal then turned to consider the substantive application before it.

15. The Respondent's case, to the extent that it can be discerned, is set out in the Defence filed by him in the County Court and amounts to no more than the following assertions:
- (a) that the Applicant does not have the lawful right to the monies because it has failed to provide a detailed summary explanation of the service charges claimed and supporting paperwork.
 - (b) that the Claimant has failed to give credit to the Respondent for payments made by him and has appropriated such payments for its own legal costs.
 - (c) that the Applicant has failed to provide the correct documentation and summary as requested by the Respondent on several occasions.
16. The Applicant's case was set out in the witness statement of Mr Christopher Case dated 15 August 2016 who is an employee of the managing agent and is involved in the management of the estate generally.

The Service Charges

17. Having carefully considered the evidence, the Tribunal made the following findings:
- (a) that the estimated service charges for the years ended 23 June 2012 and 2013 are contractually recoverable under clause 2(17)(A)(iv)(c) of the Respondent's lease.
 - (b) that the relevant service charge demands for 2012 and 2013 were accompanied by a summary of the tenant's right and obligations.
 - (c) that the amounts claimed for 2012 and 2013 are reasonable and payable by the Respondent.
 - (d) there is no evidence of what payments, if any were made by the Respondent and in respect of which the Applicant failed to give credit.

The Administration Charge

18. The Tribunal made the following findings:
- (a) that the legal costs of £2,460.31 incurred in 2010/11 are contractually recoverable under clause 2(12) of the Respondent's lease.

- (b) that the legal costs are reasonable and payable by the Respondent.

Costs - Section 20C & Fees

19. No application was made by the Respondent under section 20C of the Act.
20. Given that the Applicant has wholly succeeded in the application, the Tribunal orders the Respondent to reimburse the Applicant the application fee of £5 it has paid to the Tribunal within 28 days of this decision being served on him.
21. This matter is now remitted back to the County Court to determine any outstanding issues in those proceedings.

Name: Judge I Mohabir

Date: 12 September 2016

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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).