

11655



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

Case Reference : LON/00BK/LSC/2016/0104

Property : 71 A Clifton Hill, London NW8 0JN

Applicant : Mr and Mrs Fisher

Respondent : 71 Clifton Hill Limited

Type of Application : **Paper Determination**
For the determination of the reasonableness of and the liability to pay a service charge

Tribunal Members : Ms M W Daley LLB (hons)
Mr M Cartwright FRICS

Date and venue of paper determination : *23 May 2016 at 10 Alfred Place,
London WC1E 7LR*

Date of Decision :

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision

- (2) The tribunal makes no 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].
- (3) The Tribunal does not make an order for the reimbursement of the Application fees and in respect of the hearing fees for reasons set out in the determination, the Tribunal

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 for 2016 in particular the reasonableness of service charges for insurance, the reasonableness of management fees, the reasonableness of accountancy fees and bank charges.
2. Directions were given on 15 March 2016 which provided that: "... the Application was to be determined without a hearing unless either party makes a written request to be heard before the determination..."
3. Neither party requested a hearing and the matter was listed for a determination in the week commencing 23 May 2016.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The premises comprise a flat in a converted Victorian house comprising 4 flats.
7. The Applicants hold a long lease of the property pursuant to a lease dated 2 November 1959, which was subsequently assigned to the Applicants. The lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
8. The provision of the lease were subsequently varied by a deed of variation dated 13 June 2011, which provided by clause 2.2 that "2.2(i) and also will pay to the Lessor a yearly service charge reserved as rent on account of one quarter of the Lessor's or the Lessor's managing agents' estimate of the costs to be incurred in the management of the

property...payable in advance by equal quarterly payments on the usual quarter days without deduction.”

9. The amendment also provided for a balancing charged to be paid, or a credit given following year end. (The specific provisions of the lease will be referred to below, where appropriate).

The written submissions by the parties to the Tribunal

10. The Applicants in their application and the accompanying letter dated 29 February 2016 stated that following the appointment by the landlord of new managing agents they received an invoice for budgeted service charges “ which came to approximately 50% more than we had been paying especially with regard to insurance. In the letter the applicants noted that the charge for insurance for 2015 was £1786.28 and the budgeted amount for this item was £2000.00, the Applicant had also obtained a quotation for insurance in the sum of £1151.85.
11. In compliance with the directions, the Applicants had provided a schedule of disputed service charges the items included the gutter clearance for the reason that they had “not been notified that it had been done.” The Applicant’s queried the accountant’s fees; on the basis that the costs had increased from £80.00 to £360.00 from 2015. The Applicants also disputed the reasonableness of the bank charges on the grounds that they had not paid this sum before, and the costs of the management fee, in the sum of £1560.00. The applicants noted that no accounts had been provided.
12. The Applicants had provided numerous letters which had been written to the managing agents in support of their claim. The letters were considered by the Tribunal.
13. On 11 May 2016 the Respondent wrote enclosing the schedule of disputed items a witness statement of Paul Anthony Cleaver of Urang Property together with documents in support of their claim. Where the documents are considered to be relevant the relevant details are referred to in this determination.
14. In their letter dated 11 May 2016, the Respondent asked for the application to be dismissed and costs awarded under Rules 9(3) (a) and 13 on the grounds that the Applicants had not complied with the directions. This application is determined below.
15. In the witness statement of Mr Cleaver at paragraph 4 he stated that I believe the budget is reasonable for a small property such as this based on comparable properties and other budgets we have discussed in front of the tribunal. In paragraph 7 of the statement, Mr Cleaver notes that this is the 5th Application made to the tribunal, of the applications he

states that They have been almost entirely unsuccessful and that they have made it “...uneconomical for the last agents to carry on managing the building.”

16. The Managing agent provided a copy of their management agreement, and a copy of the certificate of insurance provided by AXA.

The decision of the Tribunal

25. The Tribunal noted that the Applicant had provided details of their challenge on the schedule of disputed items and had also provided a bundle, on that basis the Tribunal have dismissed the Application to strike out the claim.
26. The application brought was on the basis of whether the budgeted sums were payable. Having noted the budgeted costs, the Tribunal has determined that the sum claimed are payable in accordance with clauses 2 of the lease, the Tribunal have noted that no challenge is made on the basis that the lease terms do not provide for payment to be made.
27. The tribunal has noted that the sums claimed are budgeted items and that in the event of the sums not being incurred the leaseholders shall be entitled to recover the excess by way of a credit, given this it is reasonable for the Respondent to provide a budget which on their best estimate will be sufficient to recover the costs of the service provided.
28. The Tribunal have noted that the Applicants may should there be a dispute on whether the services have been provided and whether they have been provided at reasonable costs, accordingly the Tribunal have noted that the Applicants are not prejudiced by the sums claimed in the budget for service charges.
29. The Tribunal have noted that the insurance premium is somewhat higher than the quotation provided to the Applicants however no details such as the terms of cover have been provided accordingly the Tribunal are unable to compare the proposed insurance with the insurance in place. On the basis that the Applicants are responsible for proving their case, the Tribunal finds that the sum claimed is reasonable.

Application under s.20C and refund of fees

31. The Tribunal have determined in accordance with its findings that it is not just and equitable to make an order under section 20 C of the

Landlord and Tenant Act 1985; the Tribunal also determine that no reimbursement of the fees shall be ordered.

32. The Tribunal have noted that although the Respondent has asked for an order for costs no grounds have been given other than that the Applicant has in the past brought Applications which Mr Cleaver states have been “almost entirely unsuccessful”. The Tribunal notes that Regulation 13 provides for costs where parties have been vexatious in the conduct of the litigation; the Respondent has failed to support this allegation. Accordingly the Tribunal makes no order under regulation 13 of the procedural rules.

Judge Daley

23 May 2016

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.

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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.