



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

**IN THE COUNTY COURT sitting at
10 Alfred Place, London WC1E 7LR**

Case reference : **LON/00AP/LSC/2017/0210**

Property : **21 Judd Apartments, Great Amwell
Lane, London N8 7NJ**

Applicant : **Alison Bancroft
Paul Astwood
Paymon Monajemi
Keda Price-Cousins
Jonathan Hunt
Laura Isaac
Simon Dingomal
Chemtai King**

Respondent : **Metropolitan Housing Trust**

Representative : **Clarke Willmott**

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

Tribunal members : **Judge Nicol
Mr KM Cartwright JP FRICS**

**Date of hearing and
decision** : **20th September 2017**

DECISION

The Tribunal has determined that the Respondent is entitled to charge management fees to the Applicants.

In making this determination, Judge Nicol sat as a judge of the county court.

Reasons

1. The Applicants each hold a shared ownership lease at Judd Apartments. The First Applicant, Ms Bancroft, has acted as the lead

Applicant and sometimes as their representative. The Respondent is their landlord. The Respondent in turn holds a long lease from Circle 33 Housing Trust Ltd. The relationship between the Applicants and the Respondent is governed by the terms of a standard lease referred to as the Sub-Underlease. The lease between the Respondent and Circle 33 is referred to as the Underlease.

2. In March 2015 the Applicants issued proceedings in the county court at Edmonton (claim no.B00ED792) claiming an injunction, damages and a declaration for alleged breaches of covenant. On 23rd September 2016 DJ Holmes approved a Tomlin Order by which the parties settled the issues in the proceedings other than one. Paragraph 4 stated:
 4. The sole issue of a determination as to whether the Defendant is entitled to charge managing agent fees to the Claimants as set out in Paragraphs 14 to 17 (inclusive) of the Particulars of Claim dated 11 March 2015 be transferred to the First Tier Tribunal.
3. The Tribunal held a hearing for such a determination on 20th September 2017. Ms Bancroft represented the Applicants and Mr Kohli of counsel represented the Respondent, attended by his instructing solicitor, Mr O'Toole.
4. The first issue raised at the hearing was whether the Applicants could challenge the reasonableness of the Respondent's management fees. The Applicants' Position Statement included substantial complaints about the alleged poor delivery of services and, therefore, queried the reasonableness of any management fee. In fact, the Tribunal is limited to the issue specified in the Tomlin Order and referred to it by the court. Therefore, the reasonableness of any management fee charged by the Respondent is not an issue for the Tribunal for the purposes of this decision.
5. However, the Tribunal's jurisdiction is limited under section 27A of the Landlord and Tenant Act 1985 to considering the reasonableness and payability of actual service charges. The Tribunal has no power to issue declaratory relief. The issue referred to the Tribunal in this case is in the nature of a declaration, i.e. whether the Respondent may charge its management expenses within the terms of the Sub-Underlease. Therefore, the Tribunal would appear not to have jurisdiction to decide the issue referred to it.
6. Further however, Tribunal judges are now also judges of the county court. Under a pilot scheme being run by the Property Chamber, a Tribunal judge may sit concurrently as a county court judge in appropriate cases. The Tribunal was satisfied that this was just such a case and neither party had any objections to Judge Nicol sitting as a county court judge in order that the referred issue could be determined without further delay.

7. The arrangements, both legal and practical, between the Respondent and Circle 33 are somewhat unusual. Circle 33 actually provide the usual services such as repairs and cleaning. The Applicants perceived and understood that the Respondent did not provide any services. They were reinforced in this understanding when their solicitor looked at the Sub-Underlease and advised them that there was no express provision for the Respondent to charge a management fee.
8. The Respondent provided a witness statement dated 27th November 2015 from their leasehold manager, Ms Jo Hinton. She did not attend the hearing before the Tribunal and so was not available for cross-examination. However, on the basis of the statement, the Tribunal accepts that the Respondent does provide some services and do not leave it all to Circle 33. Ms Bancroft was reluctant to accept this position but realised that it was extremely difficult to maintain that the Respondent did nothing at all. Her and her fellow lessees' problem is more to do with the alleged poor quality of such services rather than whether there are any at all.
9. The Sub-Underlease's provision in relation to service charges, clause 7, is succinct:

The Service Charge provision contained in the Underlease shall be deemed set out herein in full and shall apply mutatis mutandis to the Premises.
10. Clause 7(5) of the Underlease then includes the following:

The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the ... management ... of services for the Building and the Building Common Parts ...
11. The word "Landlord" refers to Circle 33 in the Underlease but, by operation of the phrase "mutatis mutandis", to the Respondent in the Sub-Underlease. Therefore, clause 7(5) of the Underlease applies as if it were a provision of the Sub-Underlease but with the Landlord referred to being the Respondent instead of Circle 33.
12. The phrase "management fee" has not been used but such a fee is nothing if not for expenditure incurred in connection with management. The Tribunal is satisfied that the wording of clause 7(5), as incorporated into the Sub-Underlease, is wide enough to permit the Respondent to charge a management fee and include it in the Applicants' service charges.

Name: NK Nicol

Date: 20th September 2017

General Form of Judgment or Order

In the County Court at
10 Alfred Place,
London WC1E 7LR

Claim Number	B00ED792
Date	20 th September 2017

Alison Bancroft	1st Claimant
Paul Astwood	2nd Claimant
Paymon Monajemi	3rd Claimant
Keda Price-Cousins	4th Claimant
Jonathan Hunt	5th Claimant
Laura Isaac	6th Claimant
Simon Dingomal	7th Claimant
Chemtai King	8th Claimant
Metropolitan Housing Trust Ltd	Defendant

BEFORE Judge Nicol, sitting with Mr KM Cartwright JP FRICS, as assessor, at the County Court at 10 Alfred Place, London WC1E 7LR,

UPON hearing the 1st Claimant in person and Mr Ryan Kohli of counsel for the Defendant (instructed by Clarke Willmott, solicitors),

IT IS ORDERED THAT:

1. The Respondent is entitled to charge management fees to the Applicants;
2. The reasons for the making of this Order are set out in the combined decision of the court and the First-tier Tribunal (Property Chamber) dated 20th September 2017 under case reference LON/00AP/LSC/2017/0210.

Dated: