



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

**Case reference** : **LON/00AH/LSC/2017/0418**

**Property** : **Flat 2, 15 Fairholme Road, Croydon  
CR0 3PG**

**Applicant** : **Ms Charlene Watson (formerly  
Charlene Evelyn)**

**Respondent** : **Ms Althea Johnson**

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

**Tribunal members** : **Judge P Korn  
Mrs H Gyselynck BSc MRICS**

**Date of decision** : **13<sup>th</sup> February 2018**

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**DECISION**

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## **Decisions of the Tribunal**

(1) The following items are not payable:-

- Building insurance for years ending 29.09.08 and 29.09.09
- Community electricity for years ending 29.09.08 to 29.09.12 inclusive
- Communal carpet cleaning for years ending 29.09.08 to 29.09.12 inclusive
- Management fees for years ending 29.09.08 to 29.09.12 inclusive
- Sinking fund for years ending 29.09.08 to 29.09.13 inclusive
- Accountancy fees for years ending 29.09.08 to 29.09.16 inclusive
- Interest for years ending 29.09.08 to 29.09.15 inclusive.

(2) The following items will become payable once a valid demand has been served on the Applicant:-

- Community electricity for years ending 29.09.13 to 29.09.15 inclusive
- Communal carpet cleaning for years ending 29.09.13 to 29.09.14 inclusive
- Communal pest control for year ending 29.09.14
- Building risk assessment for years ending 29.09.14 to 29.09.15 inclusive
- Sinking fund for years ending 29.09.14 to 29.09.16 inclusive
- Management fees for years ending 29.09.13 to 29.09.16 inclusive

(3) The Tribunal makes an order under section 20C of the 1985 Act that the costs incurred by the Respondent in connection with these proceedings (if any) may not be included in the service charge. The

Tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the costs incurred by the Respondent in connection with these proceedings (if any) may not be charged to the Applicant as an administration charge under her lease.

### **The application**

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the recoverability of certain service charges under her lease.

### **Paper determination**

2. In its directions the Tribunal stated that the application was to be determined without a hearing unless either party requested a hearing prior to the determination. No such request has been made, and accordingly the application is being determined on the papers alone without a hearing.

### **The background**

3. The Property comprises a one-bedroom flat on the first floor of a converted house. The Tribunal has been provided with only an undated and unsigned copy of the lease, but neither party has made any submissions to indicate that the completed lease is not in the same form as the draft supplied.
4. The Applicant is challenging a number of service charge items in respect of the year ending 29<sup>th</sup> September 2008 and in respect of all subsequent years up to and including the year ending 29<sup>th</sup> September 2016. The bulk of the challenge relates to an alleged failure on the part of the Respondent to comply with section 20B of the 1985 Act and an alleged failure to make formal demands.
5. The relevant legislation is set out in the Appendix.

### **Applicant's case**

6. The Applicant's case primarily takes the form of a completed Scott Schedule, although there is some supporting documentation. To save repetition, the Applicant's position on each item will be referred to in the section headed "Tribunal's analysis".

### **Respondent's position**

7. The Respondent had not provided any written submissions in response to the application, nor in response to the completed tenant's section of the Scott Schedule nor in response to the other information or documentation supplied by the Applicant. In addition, the Respondent did not attend the case management conference organised by the Tribunal to discuss and clarify the issues.
8. On 18<sup>th</sup> January 2018 the Respondent wrote to the Tribunal requesting more time to provide certain information which she had been directed to provide. Her request for extra time was made primarily on grounds of ill health. The Tribunal allowed her a certain amount of extra time but then no submissions were received from her prior to the Tribunal's determination.

### **Tribunal's analysis**

There is a discrepancy between the application form and the Scott Schedule as to which items are in dispute. As the Scott Schedule was produced later than the application and is headed "Disputed Service Charges S/C Year End" we are taking the Scott Schedule as determinative as to which items the Applicant is disputing.

#### **Building insurance for years ending 29.09.08 and 29.09.09**

9. The Applicant argues that the request for payment in each case was not formally made and also does not comply with section 20B of the 1985 Act as payment was requested more than 18 months after the cost was incurred.
10. The Respondent has not responded at all to this submission. We note that the Respondent has been unwell, but there is no formal medical evidence to show that she was incapable of responding at all to the application such as would have justified a further extension of the time limits contained in the Tribunal's directions (and the rescheduling of the Tribunal's determination to a later date).
11. Section 20B of the 1985 Act reads as follows:-

*"(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."*

12. Amounts payable for insurance fall within the definition of "service charge" in section 18 of the 1985 Act and are therefore also caught by section 20B.
13. The Tribunal has a written submission from the Applicant stating that the insurance premiums were demanded more than 18 months after they were incurred, and the Tribunal has received no evidence from the Respondent to counter this. There is also no evidence before us that the Respondent notified the Applicant for the purposes of section 20B(2) of the 1985 Act that the costs had been incurred, and therefore we do not have any basis for disapplying section 20B(1).
14. Therefore, section 20B(1) of the 1985 Act applies to these charges and the Applicant is not liable to pay them.

Community electricity for years ending 29.09.08 to 29.09.12 inclusive

15. The Applicant again argues that the request for payment in each case was not formally made and also does not comply with section 20B of the 1985 Act as payment was requested more than 18 months after the cost was incurred.
16. The evidential position is in our view the same as for the insurance premiums referred to above. Therefore, again section 20B(1) of the 1985 Act applies to these charges and the Applicant is not liable to pay them.

Communal carpet cleaning for years ending 29.09.08 to 29.09.12 inclusive

17. The Applicant again argues that the request for payment in each case was not formally made and also does not comply with section 20B of the 1985 Act as payment was requested more than 18 months after the cost was incurred.
18. The evidential position is in our view the same as for the insurance premiums and community electricity referred to above. Therefore, again section 20B(1) of the 1985 Act applies to these charges and the Applicant is not liable to pay them.

Management fees for years ending 29.09.08 to 29.09.12 inclusive

19. The Applicant again argues that the request for payment in each case was not formally made and also does not comply with section 20B of the 1985 Act as payment was requested more than 18 months after the cost was incurred.
20. The evidential position is in our view the same as for the insurance premiums, community electricity and communal carpet cleaning referred to above. Therefore, again section 20B(1) of the 1985 Act applies to these charges and the Applicant is not liable to pay them.

Sinking fund for years ending 29.09.08 to 29.09.13 inclusive

21. The Applicant again argues that the request for payment in each case was not formally made and also does not comply with section 20B of the 1985 Act as payment was requested more than 18 months after the cost was incurred.
22. The evidential position is in our view the same as for the insurance premiums, community electricity, communal carpet cleaning and management fees referred to above. Therefore, again section 20B(1) of the 1985 Act applies to these charges and the Applicant is not liable to pay them. This includes the year to 29.09.13 as there is no evidence of a demand in respect of that year either in relation to sinking fund contributions.

Accountancy fees for years ending 29.09.08 to 29.09.16 inclusive

23. The Applicant argues that these charges are unreasonable as Annual Certificates were not provided and as she did not receive a summary until 24<sup>th</sup> January 2017 and this was backdated for 9 years. The summary was provided by Angela Kelly of AM Chin & Co who was disbarred prior to producing the summary and whose calculations she believes to be unreliable and in breach of the lease.
24. Again the Respondent had not made any submissions challenging the Applicant's analysis. Whilst being disbarred does not necessarily make a person incapable of performing certain accounting functions, nevertheless on the balance of probabilities on the basis of the evidence provided we consider that the Applicant has received a substandard service of little or no value and therefore that these amounts should be disallowed in their entirety.

Community electricity for years ending 29.09.13 to 29.09.15 inclusive

25. We note that certain service charges were demanded by a letter dated 23<sup>rd</sup> December 2014. The letter is not by itself a valid demand, as for example there is no evidence that it was accompanied by a summary of the rights and obligations of tenants. However, in our view it can serve as a notification for the purposes of section 20B(2) of the 1985 Act of costs that have been incurred and that the Applicant will subsequently be required to pay.
26. In relation to the actual service charges demanded by that letter in respect of the year ending 29.09.13, in the absence of evidence to the contrary we consider that the sums concerned were incurred on that date, i.e. on 29<sup>th</sup> September 2013. As the Respondent's letter is dated 23<sup>rd</sup> December 2014 it follows that the Applicant was notified of the relevant charges within 18 months of their having been incurred and therefore that section 20B(1) of the 1985 Act does not apply. This also applies to those actual service charges demanded by that letter in respect of the year ending 29.09.14 which (in the absence of evidence to the contrary) to have been incurred on 29<sup>th</sup> September 2014.
27. There is another letter of demand dated 11<sup>th</sup> December 2015, and the same points apply to this letter. Again, it constitutes a notification for the purposes of section 20B(2) in respect of the service items that it lists up to the extent that they were incurred within 18 months prior to the date of the letter.
28. As the letters dated 23<sup>rd</sup> December 2014 and 11<sup>th</sup> December 2015 are insufficient to constitute valid demands the Respondent will still need to serve valid demands before the sums concerned become payable.
29. The 2014 letter refers to electricity charges from 2007 to December 2014, and the 2015 letter includes charges up to December 2015.
30. The validity of the demands and the section 20B issue are the only points raised by the Applicant in relation to these charges, and on the basis of the information before us there is no basis for disallowing these charges completely. However, in the absence of valid demands these amounts will only become payable after valid demands have been served.

Communal carpet cleaning for years ending 29.09.13 to 29.09.14 inclusive

31. The position is the same as for community electricity for these years. The validity of the demand and the section 20B issue are the only points raised by the Applicant in relation to these charges, and on the basis of the information before us there is no basis for disallowing these charges completely. However, in the absence of valid demands these

amounts will only become payable after valid demands have been served.

Communal pest control for year ending 29.09.14

32. The position is the same as for community electricity for this year. The validity of the demand and the section 20B issue are the only points raised by the Applicant in relation to these charges, and on the basis of the information before us there is no basis for disallowing these charges completely. However, in the absence of valid demands these amounts will only become payable after valid demands have been served.

Building risk assessment for years ending 29.09.14 to 29.09.15 inclusive

33. The position is the same as for community electricity for these years. The validity of the demand and the section 20B issue are the only points raised by the Applicant in relation to these charges, and on the basis of the information before us there is no basis for disallowing these charges completely. However, in the absence of valid demands these amounts will only become payable after valid demands have been served.

Sinking fund for years ending 29.09.14 to 29.09.16 inclusive

34. The position is the same as for community electricity for the years ending 29.09.14 to 29.09.15 on the basis of the letter dated 11<sup>th</sup> December 2015 which constituted a notification for the purposes of section 20B(2). The validity of the demand and the section 20B issue are the only points raised by the Applicant in relation to these charges, and on the basis of the information before us there is no basis for disallowing these charges completely. However, in the absence of valid demands these amounts will only become payable after valid demands have been served.
35. In relation to the charge for the year to 29.09.16, the section 20B point does not apply and has not been argued. The Applicant argues that she should not have to pay as the breakdown detail requested by her has not been provided, but we disagree that this is a proper basis for withholding payment. However, the evidence indicates that the Respondent has not served a valid demand on the Applicant, and therefore again this amount will only become payable after a valid demand has been served.

Management fees for years ending 29.09.13 to 29.09.16 inclusive

36. The position in relation to the validity of the demand and the section 20B issue is the same as for community electricity for the years



29.09.13 to 29.09.15. The issue is not relevant for the year to 29.09.16 as 18 months have not yet elapsed.

37. In relation to the years ending 29.09.14 to 29.09.16 the Applicant has also argued that the Respondent has not carried out any work. We disagree with this assessment, as at the very least the Respondent has arranged insurance, and the sums charged are relatively modest.
38. Therefore, on the basis of the information before us there is no basis for disallowing these charges completely. However, in the absence of valid demands these amounts will only become payable after valid demands have been served.

Interest for years ending 29.09.08 to 29.09.15 inclusive

39. In relation to all of the disputed service charge items, they are either not payable at all or are not payable until a valid demand has been served on the Applicant. Therefore, none of the interest charged in respect of the disputed service charge items is payable.

Costs

40. The Applicant has applied for an order under section 20C of the 1985 Act that the costs incurred by the Respondent in connection with these proceedings (if any) should not be included in the service charge. She has also applied for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the costs incurred by the Respondent in connection with these proceedings (if any) should not be charged to the Applicant as an administration charge under her lease.
41. The Applicant has been successful (in varying degrees) on every point and the Respondent has not engaged with the process. It is therefore entirely appropriate to make both of these orders, and we hereby do so.

**Name:** Judge P Korn

**Date:** 13<sup>th</sup> February 2018

## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

## APPENDIX

### 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 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.

### **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.