



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

Case reference	:	LON/00AH/LSC/2018/0150
Property	:	2 Bramleyhyrst and Garage 28, 29 Bromley Hill, CR2 6LL
Applicant	:	Gary Allan Sharpe and Craig Ian Sharpe
Representative	:	Gary Sharpe
Respondent	:	Bramleyhyrst Residents Freehold Ltd
Representative	:	Jonathan Wragg (Counsel)
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge Robert Latham Pat Casey MRICS
Date of Hearing and Venue	:	6 September 2018 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	10 October 2018

DECISION

Decisions of the Tribunal

- (1) Claim No. D95YX944 – Flat 2: The Tribunal determines that service charges and administration charges of £2,148 are payable and reasonable.

- (2) Claim No. D99YX354 – Garage 28: The Tribunal determines that service charges of £400 and administration charges of £132 are payable and reasonable.
- (3) The Tenants' Application: The Tribunal determines that the service charges and administration charges demanded for the service charge years 2015/6, 2016/7 and 2017/8 in respect of Flat 2 and Garage 28 are payable and reasonable.
- (4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (5) Since the Tribunal has no jurisdiction over county court costs and fees, this matter is now referred back to the Croydon County Court.

The Application

1. This Tribunal is asked to determine three applications 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 Applicant tenants in respect of the Flat 2 Bramleyhyrst ("the Flat") and Garage 28 ("the Garage"), 29 Bromley Hill, CR2 6LL:

(i) On 4 October 2017, the landlord issued Particulars of Claim (D95YX944), dated 22 August, seeking a money judgment in the sum of £3,168 in respect of Flat 2. The claim relates to (a) service charges of £2,148, an (b) administration fee of £180, and (c) costs in the sum of £840. On 19 October, the tenants filed a Defence complaining of the unreasonableness of the administration charges and legal fees. On 24 April 2018, District Judge Parker, sitting at Croydon County Court, transferred the matter to this Tribunal. The sum of £180 is a charge by Property Debt Collectors ("PDC"). It is not a sum that has been paid by the landlord. It has not been demanded as an administration charge. The landlord conceded that this can only be recovered as part of the County court costs, if at all.

(ii) On 12 October 2017, the landlord issued Particulars of Claim (D99YX354), dated 20 September, seeking a money judgment in the sum of £1,552 in respect of Garage 28. The claim relates to (a) service charges of £400, (b) an administration fee of £312, and (c) costs in the sum of £840. On 23 October, the tenants filed a Defence complaining of the unreasonableness of the administration charges and legal fees. On 12 April 2018, District Judge Bishop, sitting at Croydon County Court, transferred the matter to this Tribunal. The administration fee of £320, includes a sum of £180 which is a charge by PDC. Again, this sum that has not been paid by the landlord and has not been demanded

as an administration charge. The landlord conceded that this can also only be recovered as part of the County court costs, if at all.

(iii) On 12 March 2018, the tenants issued an application seeking to challenge the service charges and administration fees payable in respect of Flat 2 and Garage 28 for the service years 2015/6, 2016/7 and 2017/8. The sums disputed were not identified with any sufficient particularity. On 14 March, the Tribunal asked the tenants to identify the substance of their challenge. It then convened a Case Management Conference which the tenants failed to attend. Mr Gary Sharpe informed the Tribunal that he was unable to do so because of a family crisis.

2. On 19 June, the Tribunal gave further Directions. Mr Gary Sharpe confirmed that the tenant' case related to administration charges levied over a number of years. Pursuant to the Directions:

(i) The landlord has disclosed a number of documents. The tenant contends that the disclosure was inadequate.

(ii) The tenants filed a Schedule identifying the service charge items and administrative charges which are in dispute. The grounds for contending that these items are not payable or are unreasonable are not specified. No witness statement was filed. On 15 August, the Tribunal notified the parties of the limited role that tenants would have in the hearing. It would be for the landlord to prove the payability of the sums demanded. The tenants have failed to identify any grounds for contending that any item was not reasonable.

(iii) The landlord has filed a witness statement from Ms Claire Manton, a Senior Property Manager with Property Maintenance and Management Services Limited ("PMMS"). The landlord has also filed a Bundle of Documents.

3. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

4. Mr Gary Sharpe appeared on behalf of himself and his brother, Craig Sharpe. The Respondent was represented by Mr Jonathan Wragg (Counsel) instructed by PDC Law. He was accompanied by Ms Claire Manton. The Tribunal heard evidence from Mr Sharpe and Ms Manton.

The Lease

5. The lease for Flat 2 is at p.87-108. It is dated 11 December 1992. The landlord relies on the following covenants by the Lessee in respect of their demand for administration charges:
 - (i) "to pay to the lessors all costs charges and expenses (including Solicitor's Counsel's and Surveyor's costs and fees) incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the of the Law of Property Act 1925" (Clause 2(9)).
 - (ii) "to pay to the Lessor all expenses it may incur in collecting arrears of rent or other moneys due under this Lease payable by the Lessee (together with interest a 2% above the published base rate of the National Westminster Bank PLC from time to time on all service charges which are in arrear and unpaid for more than twenty-one days after the same shall become due and payable hereunder) or enforcing any obligation of the Lease" (Clause 2(12)).
6. By Clause 3(4), the Lessee covenants to pay a service charge. The manner in which the service charge is to be operated is specified in the Fifth Schedule. The Service Charge year runs from 26 March to 25 March. The services which the landlord covenants to provide are specified in Sixth Schedule.
7. The lease for Garage 28 is at p.110-122. It is dated 8 April 1997. Clauses 2(11) and 2(20) mirror the provisions in Clause 2(9) and (12) in respect of the Flat. The Tenant covenants to pay 1/32 of the cost of the series charges relating to the garages. The manner in which the service charge is to be operated is specified in the Fourth. The Service Charge year again runs from 26 March to 25 March. The services which the landlord covenants to provide are specified in the Fifth Schedule.

The Background

8. On 16 May 2002, the Applicants acquired the tenant's interest in both Flat 2 and Garage 28 (see p.148 and p.8). The Respondent Company is owned by the lessees. There are 32 flats on the estate.
9. On 13 July 2009, a Tribunal determined the service charges payable for the period 26 March 2004 to 25 March 2009. This was a transfer of proceedings which the landlord had issued in the County Court. Save for three items, the service charges were found to be payable and reasonable. These arrears have now been cleared.
10. Ms Manton gave evidence that the Applicants have been in arrears on both leases since 2015. She produced Service Charge Statements dated 23 August 2018 which set out the current position:

(i) The arrears in respect of Flat 2 were £833. £120 relates to arrears of service charges for 2015. £340 relates to arrears of service charges for the current year. In the current year, the Applicants should have made five payments of £170; they have only made three payments. £373 relates to three late payment fees (£168) and court fees (£205).

(i) The arrears in respect of Garage 28 were £507. £260 relates to arrears of service charges for the current year. £247 relates to two late payment fees (£132) and court fees (£115).

Case No.D95YX944

11. On 4 October 2017, the landlord issues Particulars of Claim, dated 22 August, seeking a money judgment in the sum of £3,168 in respect of Flat 2. The claim relates to (a) service charges of £2,148, an (b) administration fee of £180, and (c) costs in the sum of £840. This Tribunal is only concerned with the claim for service charges of £2,148.
12. The demand on which this claim is based is dated 2 August 2017 (at p.157). The invoice relates to service charges of £1,860 for 2017/8 and arrears of £288. There is a statement of account at p.158-9. This includes two late payment fees of £36 and an administration charge of £96 for sending the papers to PDC Law.
13. The Tribunal satisfied itself that the service charges demanded are payable and reasonable. The tenants have not identified any grounds for contending that they are not reasonable. The budget is at p.195 together with the actual unaudited expenditure for 2017/8. The total budget is £59,520 of which the Applicants' 1/32 contribution is £1,860. The most significant item is a contribution of £26,981 towards a reserve fund. Building insurance is £5,622. This is reasonable for an Estate consisting of 32 flats. Communal services include cleaning the stairwells (£3,468), cleaning the windows of the common parts (£2,267) and gardening (£6,840). Again, all these items seem reasonable. £5,000 was budgeted for repairs whilst the actual expenditure was £8,635. The actual expenditure was some £270 per flat. The managing agents charge a fee of £5,145. The management agreement between the landlord and PMMS was not available. The charge per flat is £160 per flat or £129 if VAT is excluded. This charge is at the lower end of the scale. We are satisfied that all the sums included in the budget are payable and reasonable.
14. The Applicants' real concern seems to be the administration charges levied by the landlord. Ms Manton explained that the initial demand was sent out on 28 March 2017 (p.194). It is accepted that it was accompanied by the relevant Summary of Rights and Obligations. Two half yearly payments are demanded, but the tenants are offered the option of paying by a monthly standing order. Payment was required by 21 April.

15. If a payment is not made, a reminder is sent out. An example of such a letter dated 1 May 2015, is at p.188. This requires payment within some 14 days. If this payment is not made, the tenant is warned that an administration charge of £36 will be levied. On 20 May 2015 (at p.189), PMMS sent out the 2nd reminder letter upon which the administration charge of £36 is payable.
16. The landlord is claiming the following administration charges: (i) £36 in respect of the 2nd reminder letter sent out in respect of the 2015/6 service charge on 20 May 2015 (at p.189); (ii) £36 in respect of the 2nd reminder letter sent out in respect of the 2016/7 service charge on 18 May 2016; and (iii) £96 which was levied on 2 September 2016 when the papers were sent to the Professional Debt Collection Agency ("PDC") for enforcement action. Mr Wragg confirmed that these sums had been paid by the landlord.
17. Mr Sharpe complained of the promptness with which these charges had been levied. The landlord warned the tenants of the consequences of their failure to pay the sums that were demanded and which were lawfully due. The tenants defaulted on their payments at their peril.
18. The Tribunal is satisfied that these administration charges are payable and reasonable. There is always a line between what debt collecting function is covered by the basic management fee, and beyond which the managing agent is entitled to charge an additional fee. The initial demand and the 1st reminder letter are covered by the basic fee; an additional fee is only charged when a 2nd reminder letter is required. In this case, the basic management fee is very modest (£129 per flat). The landlord Company is owned by the tenants. It would be unfair that the other tenants should have to bear the cost of the default by one of their colleagues.

Case No.D99YX354

19. On 12 October 2017, the landlord issues Particulars of Claim, dated 20 September, seeking a money judgment in the sum of £1,552 in respect of Garage 28. The claim relates to (a) service charges of £400, (b) an administration fee of £312, and (c) costs in the sum of £840. This Tribunal is only concerned with the claim for service charges of £400 and administration charges of £132. The remaining administration charge of £180 is the charge by PDC which has not been paid by the landlord.
20. On 29 March 2016, PMMS demanded payment of £150 for the 2016/7 service charge (p.176-178). On 28 March 2017, PMMS demanded payment of £250 for the 2017/8 service charge (p.179-181). There is a Statement of Account at p.26. The service charge accounts for 2016/7 are at p.210-214). The Applicant tenants have not objected to any of the

items of expenditure at p.214. The Tribunal is satisfied that these sums are payable and reasonable.

21. The landlord is claiming the following administration charges: (i) £36 in respect of the 2nd reminder letter sent out in respect of the 2015/6 service charge on 1 May 2015 (p.183); and (ii) £96 which was levied on 2 September 2016 when the papers were sent to the PDC for enforcement action. For the reasons discussed above, we are satisfied that these administration charges are reasonable. There are separate leases and separate accounts for Flat 2 and Garage 28.

The Tenants' Application

22. On 12 March 2018, the tenants issued an application seeking to challenge the service charges and administration fees payable in respect of Flat 2 and Garage 28 for the service years 2015/6, 2016/7 and 2017/8. The application form is at p.123-134. The substance of the challenge seems to be the administration charges levied by the landlord (see p.132).
23. The tenants have filed a Scott Schedule (at p.163-167. This relates to the period 25 March 2008 to 6 April 2018. No grounds are specified for contending that these items are either not payable or are unreasonable. The tenants have merely inserted "Reserve Comment. Info requested". On 15 August (at p.85), the Tribunal notified the tenants of the limited role that they would have in the hearing.
24. The landlord has provided the following service charge accounts:
 - (i) The Flats: 2014/5 (p.197-2011); 2015/6 (p.202-204); 2016/7 (p.205-209). We have also been provided with the unaudited accounts for 2017/8 (at p.195).
 - (ii) The Garages: 2016/7 (p.210-2014).

We are satisfied that all the sums demanded have been payable and are reasonable. Mr Sharpe did not seek to argue that any item was either not payable or was unreasonable. We are satisfied that the demands have been accompanied by the requisite Summary of Rights and Obligations.

25. We have considered a number of the administration charges which have been demanded. We are satisfied that these are payable under the terms of the tenants' leases. These are variable administration charges. We are satisfied that they are reasonable in amount and that the demands have been accompanied by the requisite Summary of Rights and Obligations.

Application under s.20C and Refund of Fees

26. The Applicants have paid tribunal fees of £300. The Respondent has paid no tribunal fees. The Applicants applied for a refund of the fees that they have paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal makes no order. It is the landlord who has been successful in these three applications.
27. In the application form, the tenants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal has determined that it would not just and equitable in the circumstances for an order to be made.

The Next Steps

28. The Tribunal has no jurisdiction over county court costs and this matter is now returned to the Croydon County Court. The Court will need to consider whether any order should be made pursuant to Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2012. The Court will also need to consider whether it was proportionate for the Respondent landlord to have issued two sets of proceedings in the County Court for these relatively small sums.

Judge Robert Latham
10 October 2018

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 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 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).