



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

Case reference : LON/00AM/LSC/2018/0164

Property : Flat C, 108 Forest Road, London E8
3BH

Applicant : Mr J. Fowler (Tribunal appointed
Manager)

Representative : John Beresford of Counsel

Respondent : Mr M. Athurworrey

Representative : In person

Type of application : Liability to pay service charges and
administration charges (S. 27A
Landlord and Tenant Act 1985, and
Sched. 11 Commonhold and
Leasehold Reform Act 2002)

Tribunal members : Judge Lancelot Robson
Mrs J Dalal

**Venue and Hearing
Date** : 10 Alfred Place, London WC1E 7LR
6th September 2018

Date of decision : 10th September 2018

DECISION

Decision Summary

- (1) The following sums were found due from the Respondent to the Applicant:
- | | |
|--|-----------------------------------|
| Estimated Service charges 1.7.17 - 30.6.17 - | £1,346.39 |
| Administration charge - Legal fees | £1,769.86 (£26.84 being credited) |
| | ----- |
| Total | £3,116.25 |
- (2) The total due shall be paid by the Respondent within 21 days of the date of this decision.
- (3) The Tribunal also records that the county court costs of this case, and ground rent are matters reserved to the Court. The Respondent confirmed to the Tribunal that he did not dispute the ground rent of £125
- (4) The Tribunal makes the other determinations as set out under the various headings in this decision.
- (5) This case shall now be referred back to the County Court at Clerkenwell and Shoreditch to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

Application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of demands made in respect of estimated service charges falling due in the service charge years commencing on 1st July 2017, and administration charges in respect of legal costs of £1,796.70 (reduced to £1,769.86) payable pursuant to the terms of a lease (the Lease) dated 16th September 2013.
2. This case was referred to the Tribunal by an order of Deputy District Judge Sterlini in the County Court at Clerkenwell and Shoreditch in case no E02YJ428 dated 28th March 2018.
3. The Tribunal gave Directions for this hearing on 2nd May 2018.
4. The Applicant was appointed as the Manager by the First-tier Tribunal on 12th October 2016 following a hearing. The property consists of a house converted into 3 flats. The application for the appointment of a Manager was made by the long leaseholder of Flat A. Flat C is held by the Respondent, and his company owns Flat B.
5. Extracts from the relevant legislation are attached as Appendix 1 below.

Hearing

5. The Tribunal noted that the Respondent had made no formal statement of case beyond completion of the Scott Schedule as required by the Directions, prior to the hearing. At the hearing the Respondent introduced a statement dated 6th September 2018, described as a witness statement, but was in fact a statement of case, raising many matters beyond those set out in the Scott Schedule, but addressed no matters relevant to the issues to be decided by this Tribunal, and contained an application to adjourn the hearing.

6. Mr Beresford, for the Applicant produced a witness statement from Mr Robert Boucher dated 5th September 2018, breaking down the time elements of the legal fees demanded. He also produced a further copy of the demand for legal costs together with a copy of the statutory statement of tenant's rights and obligations applicable to an administration charge. Both of these had been served upon the Respondent just prior to the hearing.

7. The Tribunal decided to admit all the above documents, but pointed out to the Respondent that it was not now open to him to introduce fresh issues beyond those set out in the Scott Schedule.

8. The Respondent disclosed that his solicitors, Carter Bell no longer acted for him. The Tribunal confirmed that it had received a notice of ceasing to act from Carter Bell dated 5th September 2018.

9. The Respondent stated he had not received a copy of the bundle, but he did not want to read it. He wanted to make other points in support of his case. The Tribunal pointed out to him that if he had not read the bundle he would be unlikely to give himself the best chance to make his case against the matters alleged by the Applicant. He reluctantly agreed to read it. Mr Beresford informed the Tribunal that the Respondent had refused to accept copies of the bundle, cases referred to in the skeleton argument and the other documents Mr Beresford wished to introduce (noted above), and reoffered them. The Respondent accepted them, and the Tribunal adjourned the hearing for 40 minutes to allow the Respondent to read the papers, and for the Tribunal and Mr Beresford to read his statement.

Application to adjourn

10. The parties returned at 11.30am. The Respondent made his application to adjourn the hearing. He had not seen the bundle before. He had decided that he wanted a criminal lawyer to represent him, and Carter Bell did not do criminal work. There were seven other claims on issues besides those before this Tribunal. He wanted one lawyer who could deal with everything together. It did not seem a fair playing field because he was unrepresented and the Applicant was represented by a solicitor and barrister. He asked for the matter to be adjourned together with all other outstanding claims (in excess of £100,000) against himself and his company NatKimCo Limited (the leaseholder of Flat B) pending the outcome of imminent criminal proceedings he wished to make. In answer to questions, he stated that Carter Bell had ceased to act, rather than having their representation terminated. He did not

live at the property and a restraining order was in force against him forbidding him to return to the property. He could not collect his mail, and important items were going missing.

11. Mr Beresford said his client would oppose the application. There was nothing in the Respondent's statement which related to the issues in this application. Adjourning the case to allow criminal law solicitors to be instructed would advance the application for neither party. The Respondent was attempting to suggest that he was being "ambushed" in this case. However, he was clearly aware of the County Court claim. He had instructed Carter Bells to file a defence in the County Court and have the matter transferred to the Tribunal, which had then given Directions. The Respondent had complied with those Directions through his solicitors, resulting in the Scott Schedule in the bundle. Carter Bells had agreed the index of documents for the bundle. The Applicant's solicitor had then sent a copy of the bundle to them (with a copy to the property) on 7th August 2018. The Applicant did not know if the Respondent had received it, but there was no question of an ambush. There was also a proportionality issue here. The issues were very narrow; the estimated service charge for part of 2017, and the legal costs charged by the Applicant's solicitors for a previous claim. He noted that the Respondent had confirmed earlier in the hearing that he did not dispute the service charge, but only the legal charges.

12. The Respondent said that he would feel very uncomfortable without legal representation.

13. Tribunal considered the evidence and submissions. It noted that the Lease gave the Landlord (and hence the Applicant as Manager) the contractual right to a full indemnity on costs incurred relating to a breach of covenant. Thus the only issue was whether the costs appeared reasonable in the light of time costs and disbursements in similar cases. The Tribunal decided they were reasonable. The Respondent had accepted in front of the Tribunal that the service charge was due, and that it was reasonable. The criminal matter alleged by the Respondent had not even been formulated into any kind of proceeding or application. The Respondent had not yet retained appropriate solicitors. The criminal matter alleged related to a major falsification of the lease of Flat A, (which was registered at HM Land Registry), the suggestion being that the Applicant had been appointed under false pretences. The Tribunal considered that the problem with all this was that it had not been raised at all prior to the beginning of the hearing. The case was mere assertion without any supporting evidence at all. It was all too little, and too late. Also, an adjournment was very likely to have significant financial consequences for the Respondent, as compared with the relatively small amount in issue. The Tribunal decided to refuse the application to adjourn, and recalled the parties to give its decision. It then continued with the application.

Applicants Case

14. Mr Beresford recorded that the Respondent had conceded the service charge demand. He then drew attention to the relevant Lease provisions. The

tenant's covenants, particularly Clause 4.13.2 when read with the Definitions in Clause 1, required the tenant to pay the landlord all losses (as defined, including legal proceedings) on a full indemnity basis. If that did not put the matter beyond doubt, he referred to the case of Church Commissioners for England v Ibrahim [1997] 1 EGLR 13 where the Court of Appeal confirmed the effect of very similar wording. He submitted that the words in the Lease were even clearer. The interpretation had not been raised by the Respondent.

15. The Respondent's objections to the demands were; lack of invoices, lack of the statutory information to accompany the demands, and insufficient explanation of the costs demanded. The time spent and the makeup of the bill was set out in Mr Boucher's statement. The issue related to a case brought in the County Court relating to a previous service charge demand. As a result, the Applicant had obtained judgement and subsequently a charging order against the property. The case had been brought against the leaseholders of both Flats B and C. Thus 50% of the costs incurred had been allocated to each leaseholder. Mr Boucher had noticed that one of the items of work included advice on a Section 20 notice, which should have been allocated to each of the three leaseholders. As a result, the leaseholder of Flat C was entitled to a credit of £26.84. Thus the amount sought in the County Court claim for the legal fees should be reduced by that amount.

16. Relating to the Respondent's claim that the necessary statutory notices of tenant's rights and responsibilities had not accompanied the demands for payment, he referred to the notice sent out with the service charge demands. These items had both been sent on 1st November 2017 to the property. A further copy had been sent to the Respondent's solicitors on 25th May 2018. Mr Beresford had noticed that the statutory notices for the legal charges related to service charges, rather than administration charges. While it could be argued that the charges were service charges, he had served a fresh demand attaching a copy of the statutory notice relating to administrative charges by post on the Respondent's solicitors on 5th September (unaware that they had come off the record), and provided a copy to the Respondent before the hearing to put the matter beyond doubt. The Tribunal was invited to rule as to whether the charge for legal fees was a service charge or an administrative charge (under Schedule 11 of the Commonhold and Leasehold Reform Act 2002), as subsequent claims for such charges were likely to be made. His own view was that the case of Christoforou and others v Standard Apartments Limited [2013] UKUT 0586 (LC) appeared to confirm it was an administration charge.

17. Invited to put questions to Mr Beresford on his case, the Respondent attempted to raise again the issues set out in his statement, none of which appeared in the Scott Schedule. The Tribunal intervened to point out that these were not relevant questions. He questioned the validity of the demands, suggesting that they had been raised by the Applicant's firm, Stock Page Stock, rather than the Applicant, and how they accounted for the VAT on the money collected. Mr Beresford pointed out that the demands were stated to be made on behalf of the Applicant as Manager. None of the demands in issue contained a charge for VAT. The Respondent had made some very serious allegations about the Applicant's conduct, but there was no evidence of these

matters, and they were irrelevant to this application. Mr Beresford asked the Tribunal to note in its decision that the Respondent had agreed that the Ground Rent demanded was due in his statements in the Scott Schedule. While it was a matter for the County Court, it could save further expense if the Respondent's admission was noted.

Respondent's Case

18. The Respondent submitted that if the Applicant had dealt with the real issues at the property none of these charges would have arisen, which were its unsafe condition and that the Manager quite unfairly disregarded the Respondent's interests and questions, taking instructions from the owners of Flat A. Their lease was invalid. At this point the Tribunal again intervened to remind him that this was not an issue referred to in the Scott Schedule. The Respondent submitted that the Manager had no right to make the demands he was making. The reason it was not in the Scott Schedule was that Carter Bell had only dealt with the invoices and had not raised the question of his rights to park his car at the property.

19. At the end of the hearing, the question of the Respondent's address for service was discussed. Currently this was care of Carter Bell, who were no longer on the record. The Respondent had referred earlier to the fact that he was under a restraining order not to approach the property, and could not collect his mail. The Respondent stated that he would inform the Tribunal when he had decided upon another solicitor. The Tribunal considered this was unsatisfactory. The Respondent agreed to his email address being used, and supplied it.

Decision

20. The Tribunal considered the evidence and submissions. The estimated service charge demand (£1,346.39) was not now disputed, and thus was payable. The Tribunal accepted the Applicant's submission that the Lease contractually imposed payment of sums due for legal charges on an indemnity basis, thus, so long as the charges otherwise appeared reasonable to the Tribunal, they were properly payable. The Respondent had not challenged the Applicant's interpretation of the Lease. The Tribunal decided that the charges made were of an amount which it would normally expect in this type of case. Thus the legal charges demanded were payable in full. The Tribunal considered paragraphs 4 and 5 to Schedule 11 of the Commonhold and Leasehold Reform Act 2002. It decided that the legal charges fell within the definition of an administration charge. It also decided that the demand had validly been made, but only on 6th September 2018 (in case the date is material for calculating interest on late payments under the terms of the Lease).

21. The Tribunal thus decided that the total sum of £3,143.09 now demanded by the Applicant, was reasonable and reasonably incurred. The Respondent must pay this sum within 21 days of the date of the Tribunal's decision. For completeness the Tribunal notes that issues relating to Ground

Rent and costs incurred in the County Court are matters to be decided by that Court.

22. This case shall now be returned to the County Court for determination of outstanding issues.

Tribunal Judge: Lancelot Robson Dated 10th September 2018

Appendix 1

Landlord & 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 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) and (6)....

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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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

“Meaning of “administration charge”

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 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)

(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).....

Reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable

3.

Notice in connection with demands for administration charges

4.- (1) a demand for the payment of an administration charge must be accompanied by a summary of rights and obligations of tenants of dwellings in relation to administration charges.

(2) (3) and (4).....

Liability to pay administration charges

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) (4) (5) and (6).....”
