



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

Case reference : **LON/00AZ/LSC/2018/0230**

Property : **Flat 1, 190 Stanstead Road, London
SE23 1DA**

Applicant : **Mr Solomon Krausz**

Representative : **Mr Green, Legal Representative, on
behalf of Naka Estates Ltd ('the
Managing Agents')**

Respondent : **Mrs Thelma Eugene Abrams**

Representative : **Mr Reuel Jonathan Abrams**

Type of application : **Liability to pay service charges /
administration charges**

Tribunal member(s) : **Miss A Seifert FCI Arb
Mr L Jarero BSc. FRICS**

**Date and venue of
hearing** : **4th October 2018 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **31st October 2018**

DECISION

Decision of the tribunal

- (1) The tribunal determines that the sum claimed by the applicant for service / administration charges in County Court claim (D9QZ40CV) ('the County Court claim') was reasonable and reasonably incurred and was payable by the respondent to the applicant.
- (2) The full amount for service and administration charges claimed having been paid, the tribunal determines that **£0 (zero)** is now due and owing in respect of the service charges / administration charges claimed by the applicant in the County Court claim.
- (3) No repayments are due from the applicant to the respondent.

The tribunal's reasons

The background

1. On 27th September 2017, the applicant landlord, Mr Krausz, issued the County Court claim against the respondent, Mrs Abrams, for **£1631.09** arrears of service charges / administration charges, ground rent, and contractual interest. Including the Court Fee, the total sum claimed was **£1736.09**. The respondent filed a Defence and Counterclaim in the sum of **£600** for overpayments of service / administration charges.
2. The tribunal was informed by both representatives at the hearing that the amount of **£1736.09** had been paid by the respondent to the applicant without prejudice to the Counterclaim.
3. Following the transfer from the Croydon County Court, by an order dated 11th June 2018, the tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 ('the Act') as to whether the service charges are payable and under schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable to the applicant, or to be refunded to the respondent in respect of the service charge years 2014 to 2017.
4. Section 27A of the Act concerns jurisdiction in respect of liability to pay service charges. Section 18 of the Act provides the meaning of 'service charge' and 'relevant costs'. Section 19 of the Act states that relevant costs shall be taken into account only to the extent that they are reasonably incurred and where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard and that the amount payable shall be limited accordingly. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides the meaning of 'administration charge'. A variable

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

5. An oral case management hearing took place in the tribunal. Neither party attended. Directions were made on 17th July 2018. Neither party complied with the directions as such.
6. It was noted in the directions that the tribunal has no jurisdiction to consider ground rent claims and any such claims were disregarded by the tribunal.
7. The hearing was held on 4th October 2018. Mr Green attended on behalf of the landlord / Naka Estates Ltd. Mr Reuel Abrams attended the hearing on behalf of his mother, Mrs Abrams. Various documents were provided by the parties for the hearing including a schedule prepared by the parties, documents and written submissions.

The lease

9. A copy of a lease of flat 1 dated 27th November 2009 ('the lease') was provided to the tribunal.
10. The lease was for the term of 125 years from 25th March 2009 and was made between Alan Ward as landlord and Matthew Pattison and Lisette Mala Bailey as tenant. The lease included an obligation to pay ground rent on a rising scale. The landlord's interest under the lease became vested in the applicant, Mr Krausz.
11. The tenant's interest under the lease became vested in the respondent, Simon Nathanael Abrams and Reuel Abrams, who entered into a Deed of Covenant dated 28th March 2014 with the applicant, a copy of which was provided.
12. Under the terms of the lease the 'Rent Day' was 24th June in each year. 'The Service Charge' was *the contribution equal to the Tenant's Proportion of the expenditure described in the Second Schedule*. 'The Tenant's Proportion' was *One third of the expenditure described in the Second Schedule or such other proportion as may be notified to the Tenant by the Landlord from time to time*. The service charge year commenced on 25th June until the 24th June in the following year.
13. The lease included the following covenants by the tenant with the landlord:

Clause 5(1)(a). *to pay the Rent and other money made payable to the Landlord at the times and in manner as provided without any deduction whatsoever*

Clause 5(2). *to pay contributions by way of Service Charge to the Landlord equal to the Tenant's Proportion of the amount which the Landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure on rates services repairs maintenance or insurance being and including expenditure described in the Second Schedule AND to pay the Service Charge not later than 28 days of being demanded the contributions being due on demand AND if so requested in writing by the Landlord to pay the Service Charge by banker's order or other means of automatic transmission of funds to a bank or other financial institution and account nominated by the Landlord*

14. Clause 3 of the lease contained covenants by the landlord with the tenant including covenants to repair the Retained Parts of the Building in which flat 1 is contained and a covenant to insure.
15. The Second Schedule to the lease sets out 'the Service Charge Expenditure'. This included (a) expenditure in the performance and observance of the landlord's covenants or obligations under the lease; (b) expenditure in respect of the payment of expenses of management; (c) expenditure in the provision of services, facilities, amenities and other works in the landlord's reasonable discretion are for the general benefit of the estate and tenants of the flats.
16. The Second Schedule also set out a mechanism for the preparation of a service charge statement and provision for carrying forward or refunding any surplus payments and for payment of shortfall in payments. The tenant's covenant to pay Service Charge on account of anticipated expenditure was stated as including reasonable provision for the future in respect of (a) periodically recurring items whether recurring at regular or irregular intervals and (b) the replacement or renewal of items the expenditure on which items would fall within the Service Charge Expenditure.

The sums claimed

17. Mr Green referred to the following demands in support of the sums claimed.
18. Demand dated 11th June 2014 from Naka Estates Ltd to the tenant.

The costs to us in complying with our covenants is:

<i>..... External works carried out February 2014</i>	<i>£96</i>
<i>Internal electric repairs</i>	<i>£39.95</i>

<i>Management fees</i>	<i>£216.15</i>
<i>Communal Electric Bills</i>	<i>£47.25</i>
<i>Block insurance</i>	<i>£311.98</i>

The amounts were claimed due by 30th June 2014

19. Demand dated 10th August 2017 from Naka Estates Ltd to the tenant.

The costs to us on complying with our covenants is:

<i>Management fees</i>	<i>£250</i>
<i>Communal Electric Bills..... your share</i>	<i>£28.01</i>
<i>Block insurance..... your share</i>	<i>£344.99</i>
<i>Electric charges due from 2015-2016</i>	<i>£51.06</i>

The amounts were claimed due by 9th September 2017

20. The demands included the information under the Landlord and Tenant Act 1987 and rights and obligations summaries.
21. The tribunal was informed by Mr Green that the items 'Management' and 'Insurance' were charged in advance for service charge year. The items 'External works', 'Electrical repairs', and 'Communal electric' were balancing charges for the service charge year 2013-2014.
22. Mr Green submitted that some of the documents such as that dated 9th June 2017 were not recognised as having been generated by the landlord's agents. Mr Abrams claimed that the tenant had not received some of the documents including that dated 10th August 2017. However, a post office certificate of posting was provided dated that day.

Items in dispute

23. In written submissions to the tribunal dated 30th August 2018, Mr Abrams stated that there are three heads of disputed costs

(1) Works and repairs

(2) Common areas electricity

(3) Management fee

24. **Works and repairs**

Sums claimed:

External works carried out in February 2014	£96
Electric repairs 2014	£39.95

Mr Abrams submitted that these sums were not due from the respondent as they were carried out prior to the assignment of the lease and should have been paid by the previous tenant. Mr Abrams submitted the respondent's solicitor had been assured by Mr Krausz's solicitor that this matter had been resolved at purchase. Mr Abrams submitted that zero was payable in respect of these items.

Mr Green explained that there had been contact with the respondent's conveyancing solicitor in December 2013. The invoices which are the subject of the above charges were submitted in February 2014, shortly before the transfer. These sums were an outstanding liability at the date of transfer.

25. **The Tribunal's decision – works and repairs**

There was no challenge as such to the standard of the works or reasonableness of the cost of the works undertaken. The works in issue were carried out prior to the transfer. Invoices for works were provided. However, by a Deed of Covenant dated 28th March 2014 between Mr Krausz and Mrs Abrams, Reuel Abrams and Simon Abrams (as tenant) in respect of the flat, the tenant directly covenanted to observe and perform and accept the covenants contained in the lease.

Having considered the evidence the tribunal finds that the sums claimed were payable by the respondent to the applicant.

26. **Common areas electricity**

Sums claimed:

Cost of electricity in common areas	£47.25
Cost of electricity in common areas	£28.01
Cost of electricity in common areas	£51.06

In his written submissions Mr Abrams said that the landlord's agents have been paying an estimated charge which overstates the amount of electricity used. In the schedule provided to the tribunal this item is for example, referred to at item 4. Comments were also included in the schedule under items 17, 24 and 30, which were referred to in Mr Abrams representations.

Mr Abrams submitted that the tenant had paid the sum considered reasonable for common areas electricity for each year. He described the electricity provided to the common parts as being two lightbulbs on sixty second timers.

In respect of the charge of £47.25, Mr Abrams accepted that £10 was payable but disputed the balance, leaving the figure of £37.25 in dispute in respect of this item. In respect of the charge of £28.01, Mr Abrams accepted that £10 was payable, but disputed the balance. In respect of the charge of £51.06, Mr Abrams accepted that £20 was due (£10 in respect of each of the two service charge years) but disputed the balance.

Mr Green referred to the bill from OPUS energy at 'a8' in a bundle of invoices provided by the managing agents. This showed that there was an 'actual' reading on 11th July 2018 as well as 'estimated' readings.

The tribunal considered the electricity bill from OPUS energy. This related to the period 24th June 2018 to 24th July 2018. This showed a standing charge at the rate of 70p per day. The total charge for the period excluding VAT was £22.90. Of this sum £21.70 was the standing charge element at the above rate. An invoice from the previous electricity provider Southern Electric showed an estimated charge and did not contain a breakdown of the sum claimed.

Mr Abrams submitted that the landlord should be under a duty to minimize the cost of electricity and that the charges made were unreasonable. He claimed that the charge was higher than the electricity charge for flat 1, but provided no evidence of that charge.

27. The tribunal's decision – common areas electricity

The tribunal considers that the electricity charge was high for the provision of electricity to two light bulbs. It appeared that the charge (OPUS) were largely made up of the standing charge rather than the electricity usage as such. However, the landlord is not under a duty to seek out the cheapest deal. It was a question of what was reasonable and that may not be the cheapest provider. Mr Green informed the tribunal that the landlord had changed electricity suppliers and the standing charge is currently a lower figure.

Having considered the evidence the tribunal is satisfied that the charges for common areas electricity was reasonable and reasonably incurred, and was payable by the respondent to the applicant.

28. Management charges for 2014

Sums claimed:

Management fees 2014	£216.15
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In his written representations Mr Abrams submitted that he had requested information from the managing agents and had been informed that the sum for management fees was 15% of the billed costs. However, his own calculation of 15% of the costs equated to about £100 less than the billed amount. He said that he had had no explanation in respect of this. For later service charge years, a flat fee of £250 per annum was charged for management fees. Mr Abrams commented that having grown weary of his dealing with the managing agents, he had paid the full fee of £250 per year in subsequent years.

29. The tribunal's decision – management charges for 2014

Mr Abrams was concerned that he had not been provided with a satisfactory explanation as to how the figure for the management charge of £216.15 was calculated. However, in the following years £250 per year had been charged and this has not been challenged. The tribunal considers that the figure of £216.15 was reasonable and reasonably incurred for management charges and was payable by the respondent to the applicant.

Summary

30. Having considered the evidence as a whole, and for the above reasons, the tribunal determines that the above sums were reasonable and reasonably incurred. The above sums have been paid by the respondent to the applicant and accordingly **£0 (zero)** now is due and owing by the respondent, Mrs Abrams, to the applicant, Mr Krausz, in respect of the sums for service charges / administration charges claimed in the County Court claim and no repayments are due from the applicant to the respondent.

Name: First-tier Tribunal Judge
Seifert

Date: 31st 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).