



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

**Case reference** : **LON/00AR/LSC/2018/0438**

**Property** : **6 Edinburgh House, Elvet Avenue,  
Gidea Park, Romford, RM2 6JP**

**Applicant** : **London Borough of Havering**

**Representative** : **Mr Barklem of Counsel**

**Respondent** : **Juliet Suzanne Owen**

**Representative** : **N/A**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay service and administration  
charges**

**Tribunal members** : **Tribunal Judge I Mohabir  
Mr M Cairns MCIEH**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **21 May 2019**

---

**DECISION**

---

## ***Introduction***

1. On 19 July 2018, the Applicant issued proceedings in the County Court to recover to recover arrears of service charge and ground rent from the Respondent in the sum of £2,574.71.
2. The Respondent filed a Defence to the claim in terms that the details of the charges claimed by the Applicant were unclear and did not seem to pertain to the lease.
3. By an order made by District Judge Dodsworth in the County Court at Romford, the matter was transferred to the Tribunal for determination.
4. The Respondent is the leaseholder of 6 Edinburgh House, Elvet Avenue, Gidea Park, Romford, RM2 6JP pursuant to a lease granted to her by the Applicant dated 5 June 1989 (“the lease”).
5. Clause 2(2) of the lease requires the lessee to pay a service charge contribution in respect of the costs, expenses and outgoings set out in the Fourth Schedule. Clause 12 in the same schedule obliges the lessee to pay an estimated service charge contribution in advance on or after 20 February in each year for the year commencing on 1 April thereafter.
6. The service charge arrears claimed by the Applicant are as follows:

|               |                   |
|---------------|-------------------|
| Y/E: 31.03.15 | £30.21 (actual)   |
| Y/E: 31.03.16 | £787.44 (actual)  |
| Y/E: 31.03.17 | £803.92 (actual)  |
| Y/E: 31.03.18 | £821.76 (actual). |
7. It should be noted that the year ended 31 March 2018 also included a claim for ground in the sum of £10. However, it was accepted by the Applicant that this did not fall within the definition of a “service charge” within the meaning of section 18 of the Landlord and Tenant Act 10985 (as amended) (“the Act”) and was not within the jurisdiction of the Tribunal. This part of the claim is remitted back to the County Court for determination.
8. Therefore, the total amended service charge arrears claimed by the Applicant is £2,452.34 and was determined by the Tribunal pursuant to section 27A of the Act.
9. In addition, the Applicant also claims contractual costs in the Tribunal limited to £87.50. These fall to be considered as administration

charges under Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

***Procedural***

10. On 10 May 2019, the Respondent had made an application to adjourn today's hearing on the basis that the Tribunal had not arranged mediation, which was refused. Her email dated 17 May 2019 was treated as an application for permission to appeal that decision.
11. By a decision dated the same date, the Respondent's application for permission to appeal was also refused.
12. This morning the Tribunal received 3 emails from the Respondent in support of a second application to adjourn the hearing. Essentially, the basis of the application was:
  - (a) that the Respondent suffers from ill health and is at risk of a stroke/heart attack and would not be able to travel.
  - (b) that the Respondent is of limited means and her mental health has been deeply affected since 2012 so that she needs help with all matters.
  - (c) that the Respondent has not been allowed a fair and reasonable time to prepare for the hearing.
  - (d) that the Respondent has to prepare her evidence and requires at least a 3 week adjournment.
13. The Tribunal dismissed the Respondent's application to adjourn the hearing for the following reasons.
14. As to paragraphs (a) and (b) above, there was no evidence of the Respondent's ill health and whether this prevented her from preparing for and/or attending the hearing.
15. As to paragraphs 10(c) and (d), the Tribunal was satisfied that the Respondent has had more than sufficient opportunity to prepare for and attend the hearing. In particular, the Tribunal had regard to the Respondent's serial failure to engage with the Applicant (in litigation or otherwise), failure to undertake mediation, failure to attend the adjourned case management conference on 19 February 2019 (that was adjourned at her request) and failure to comply with any of the Tribunal's directions. These matters are more fully set out at paragraphs 17 to 27 of the Applicant's supplemental statement of case, which need not be repeated here.

## ***Decision***

16. The hearing in this case took place on 20 May 2019. The Applicant was represented by Mr Barklem of Counsel. For the reasons set out above, the Respondent did not attend and was not represented.

## ***Service Charges***

17. It is important to note that the only evidence before the Tribunal was that of the Applicant's, which was unchallenged. Even in her Defence filed in the County Court, had failed to particularise what heads of service charge expenditure were being challenged and why. Therefore, the Applicant did not know what case it had to meet.
18. Nevertheless, found that the Respondent is contractually liable under clauses 2(2) and 12 in the Fourth Schedule of the lease to pay the service charges claimed in respect of each of the relevant years set out at paragraph 6 above. The Tribunal also found that the costs claimed for each year to be reasonable and payable by the Respondent.

## ***Administration Charges - Costs***

19. The Tribunal was satisfied that the Applicant's costs limited to £87.50 are recoverable under clause 1(4) in the First Schedule of the lease and that they were eminently reasonable. For the avoidance of doubt, these costs only relate to the costs claimed by the Applicant at the Tribunal. They do not relate to any other costs that the Applicant might wish to pursue against the Respondent when this case is remitted back to the County Court.

**Name:** Tribunal Judge  
I Mohabir

**Date:** 21 May 2019

## **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 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).