



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

Case Reference : **LON/00AL/LSC/2018/0343**

Property : **Flat 1, 7A Odeon Parade, London Se9 6DX**

Applicant : **Andres Vara Parsegov**

Representative : **In person together with Iryna Rudenko, the Applicant's wife and Mr Craig Thorne, lessee of Flat 5**

Respondent : **Central London Homes (Eltham) Limited**

Representative : **No representative**

Type of Application : **Determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal Members : **Tribunal Judge Dutton
Tribunal Judge Brandler
Mrs A Flynn MA MRICS**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR on 11th February 2019**

Date of Decision : **15th march 2019**

DECISION

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DECISION

1. **The Tribunal determines that the sums shown on the attached Scott Schedule are due and payable.**
2. **The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) so none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through the service charge. Details of the lessees are as named on the application form.**
3. **The Tribunal also determines that the Respondent shall not be entitled to recover the costs of the proceedings and makes an order under paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 extinguishing any liability the applicants may have had to the respondent in respect of the costs of these proceedings.**
4. **The Tribunal determines the Respondent shall pay to the Applicant the sum of £300 within 28 days of this decision in respect of the reimbursement of the Tribunal fees paid by the Applicant.**

APPLICATION

1. The Applicant seeks a determination pursuant to section 27A of the Act and also under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to the amount of service charges payable by the Applicant in respect of the service charge years for 2017 and 2018.
2. The relevant legal provisions are set out in the appendix to this decision.

HEARING

3. The Applicant appeared in person and was accompanied by his wife and by Mr Thorne. The Respondent did not attend and in fact had no part in the proceedings. On the morning of the hearing Mr Vikram from Central London Homes contacted the Tribunal indicating that he was unaware of the hearing. However, it was noted from the office file that on 5th November and 13th November he was sent letters including the directions for these proceedings, which confirmed the hearing. He did not seek an adjournment but told the case worker he would not be able to attend as he was flying out of the country and apologised. He did indicate that he would be contactable by phone if so required.
4. In disregard of the directions order made in this matter, the Applicants attended the hearing with a bundle of papers which they had not produced beforehand. This is unacceptable. In certain circumstances we may have considered adjourning the hearing to enable the Respondent to have sight of the papers and for the matter to be reconvened. However, we are satisfied that the Respondent was aware of the requirement in respect of documentation and had raised no query with the Tribunal concerning the lack of any papers having been sent nor had themselves lodged any documentation in respect of the claims made, which are set out quite clearly in the application form. In addition also, the directions issued by this Tribunal on 13th November 2018 made quite clear the steps that were required to be taken.

5. It seems to us that it would be a waste of public funds to adjourn the matter when the Respondent appeared to take no part in the proceedings. Furthermore, the matter that we were asked to deal with relates to estimated service charges and there is we suppose a possibility that there may be further proceedings once final accounts have been produced.
6. In those circumstances, we indicated a willingness to deal with the matter on the late production of the papers.

BACKGROUND

7. The property is a three bedroom flat in a purpose-built block of eight. The Applicant's occupancy is under the terms of a lease dated 27th March 2017 between Central London Homes (Eltham) Limited and himself and his wife Miss Rudenko. Insofar as the terms of the lease are relevant to the matters before us we will highlight those during the course of this decision.
8. In a statement provided in the papers we were told that the Applicant was representing 50% of all leaseholders in the building and that they had lived there for some two years. In that time they had been suffering from consistent problems relating to management, including both maintenance and cleaning of external areas. They said that they had paid all service charges demanded of them but got no services in return. They had not been receiving copies of any invoices nor indeed any accounting documentation.
9. It seems that in January of 2018 Madley Property had taken over as managing agents but had resigned shortly thereafter. Attempts at mediation and to seek the assistance of the local MP, the Council and Trading Standards had not led to any resolution.
10. On the schedule of disputed items for the years 2017 and 18 there is a consistency in respect of certain matters. Common to each year is internal cleaning, gardening and external cleaning, bin hire, communal light, security, fire risk assessment, accountancy, door entry system, repairs, insurance and management fees. In 2018 there is also a challenge to a sinking fund payment of £1,200.
11. These items are set out on the attached schedule and we have completed under the box "for Tribunal" our findings in respect of each item.
12. In a schedule of items in dispute which accompanied the papers, the following issues are raised:
 - There had been no invoices or accounts provided in respect of the service charges which run from 1st January each year. It seems unreasonable that accounts for the year ending December 2017 have not been provided. Nor does it appear that any documentation has been produced to justify the budget figures for 2018.
13. The Applicant and Mr Thorne took us through the various items on the Scott Schedule and we will deal with those briefly as follows:

14. On the question of cleaning, we were told that only one cleaner has attended for approximately 1½ hours every two weeks. We were provided with a copy of what appeared to be an extract from the internet indicating the possibility of regular cleaning at the rate of £12 per visit but this was of little or no assistance to us. It was the Applicant's contention that the charge of £2,600 for 2017 and £2,340 for 2018 were excessive.
15. On the question of gardening and external cleaning, we were told there was no garden land and photographic evidence appeared to support this. Insofar as external cleaning was concerned, we were told this was undertaken by the tenants, which included the garage area. It seems that each flat has an assigned parking space. There was no evidence of external cleaning and therefore the charges of £1,110 for 2017 and £1,368 for 2018 were challenged.
16. The next item in dispute was bin hire. It appears there are two paladins but these insufficient to cope with the amount of refuse created. The Applicants could provide no evidence as to alternative costs and it was unclear whether any contact had been made with the local authority to see whether they would assist. It did seem, however, that contractors attended every two weeks and there was in truth no real challenge to the bin store charges but the fact that there was insufficient capacity.
17. Turning then to the question of communal lighting we were told this was not installed externally until 2018. There was lighting in the internal communal parts at each floor level governed by a sensor. It seems there are only three lights on each floor and the cost of £850 in 2017 and £1,440 in 2018 was alleged to be excessive. However, it should be noted that for the period 2018 further external lights have been fitted as well as security lights and car parking lights. There now appeared to be up to nine lights in situ which we were told at the time of the hearing were working correctly.
18. The next heading on the schedule of disputed service charge costs is security. It seems there were no external CCTV cameras until 2018. It is not, we were told, a gated community and there was no evidence to justify any expense in 2017. Insofar as 2018 was concerned, CCTV has been installed. Some extracts from the internet were included to show the potential costs but these did not indicate whether they included a fitting price or whether VAT was included.
19. In the 2017 and 2018 schedule, there is a claim for a fire risk assessment of £600. The Applicants were not aware that there had been any fire risk assessment as certainly no report appears to have been provided to them. There had, however, been an error code on the fire alarm and it may be that there had been some attendance on that issue.
20. The next heading in the schedule was accountancy. At the time of the hearing no accounts had been produced. In any event, it was thought that the costs were high for dealing with the level of accounting that would be required.
21. The next matter we were asked to consider was the door entry phone which for 2017 was £250 but for 2018 had risen to £480. There is a door entry phone and it

appears to be working. What the Applicants could not discern is why it had increased so much between 2017 and 2018.

22. As to repairs, in 2017 there is an estimated figure of £500 and in 2018 £720. The Applicants were satisfied that an assessment of £500 for the potential for repairs was reasonable but in the absence of any evidence to show this sum was actually being spent, they could certainly see no reason why it should increase to £720 for the year 2018.
23. On the question of insurance, the premium charged for 2017 was £1,100 and for 2018 £1,149. There was no particular challenge to the level of premium but it appears that no documentation to confirm that the insurance was in place has been produced, nor any evidence as to how the policy is arranged.
24. On the question of management fees, we were referred to a chain of emails which is an unedifying experience. However, the emails did show a certain offhand response to queries raised. The Applicant's view is that there was little or no evidence of management being undertaken. There was an inability to contact the landlord who now no longer had a managing agent and whilst the fee for 2017 of £1,150 and for 2018 of £1,173 would not be unreasonable per se, as no management was actually undertaken the Applicants considered that a much lower sum, if anything, would be payable.
25. On the accounts for 2018 is a sum of £1,200 in respect of sinking funds which the Applicants had no particular issue with but no evidence of any planned maintenance arrangements was available and the property should still have the benefit of NHBC cover. Finally we were told that the Applicant and Mr Thorne represent all the leaseholders who are resident. Apparently Flats 2, 3, 4 and 8 are sub-let and indeed may still be within the ownership of the landlord.

DECISION

26. As we indicated, we have included on the schedule our findings but by way of explanation we say as follows:
 - Cleaning – the evidence is that this was only undertaken some 1½ hours fortnightly. There was no evidence given by the landlord as to the cleaning arrangements but from our knowledge and experience, we would estimate that something in the region of £20 to £25 would need to be paid per visit and on that assumption with materials and travel a figure of around £1,000 would seem to be a reasonable estimate for cleaning of the common parts for both years.
 - Gardening and external cleaning – there is no gardening and the external cleaning would be confined to the car parking and other footpath areas. This would be done we would have thought as part of the cleaning contract but we make an allowance of £250 for each year in respect of this matter.
 - Bin hire – the figure for 2017 is £650 which seems reasonable. There will be a slight increase for the following year and we would allow £700 as being a reasonable cost for the attendance by contractors to deal with the two paladins. However, the landlord should be considering whether further bins are available

and also whether or not the local authority can undertake the emptying exercise.

- Communal lighting – for the year 2017 the figure is £850 but relates only to the communal lighting in the common parts. It seems on the high side but it is only an estimate and we, with reluctance, allow that sum. In respect of 2018 there does appear to have been more work undertaken in respect of the installation of external lighting which we would have thought could have been fitted at somewhere near the price of £300. However, again it is estimated and we therefore consider that the sum of £1,440 claimed for 2018 is not so unreasonable that it requires us to interfere.
 - Security – it appears that the front door does not close properly nor does the gate to the car park. In 2018 it seems that there was some security CCTV installed but it is difficult to say that in 2017 any costs are reasonable and accordingly for that year we disallow the estimated amount in full but would allow for 2018 the sum of £800 as an estimated figure.
 - Fire risk assessment – for the year 2017 an estimate of £600 seems reasonable. However, there seems no reason for there to be a further fire risk assessment in 2018 nor the need for there to be any estimated charge in respect thereof and therefore for 2018 we disallow that cost.
 - Accountancy – it is clear that some accountancy would be required. The Applicants indicated an acceptance of £420 per year. There are only eight flats, it should not therefore be a difficult accounting exercise and we would therefore allow an estimated charge for both years of £420.
 - Door entry system - £250 was sought in 2017 and £480 in 2018. There is no indication as to why the figure has increased. It is reasonable to have some sum set aside to deal with door entry system problems and maybe a contract is in place. We do not know. However, we would allow the sum of £250 for each year.
 - Repairs – it is reasonable for there to be an estimated cost for both years. In 2017 it was £500 and we see no reason by it cannot be the same for 2018 and would therefore allow that sum.
 - Insurance – the premium sought seemed to be reasonable although the landlord should produce copies of the insurance details and a schedule to confirm that cover is in place and that each lessee's position with mortgagee is protected.
 - Management fees – there appears to be little evidence of involvement. Indeed the fact that the Respondents did not bother participating in the proceedings, speaks volumes. This is perhaps indicative of the manner in which they have managed the development since its inception. Whilst there is undoubtedly some management being undertaken, it seems to us that an estimated charge of £400 for each year is reasonable. When actual costs have been determined they can seek to recover any amount which they think might be due. It does seem to us however that a management fee based on a percentage is not in accordance with the RICS code. This should be done on a cost per unit basis.
 - Sinking fund -at £1,200 which the Applicants did not seek to challenge. However, the Respondent landlord must make sure it complies with the provisions of the 1987 Landlord and Tenant Act and that these monies are held in a separate trust account.
27. Finally, we conclude that it would be reasonable in the circumstances to make reimbursement of the hearing and application fee of £300. The claim has merit

and the Respondents have not involved themselves. Accordingly we order that the Respondent should pay to the Applicant the sum of £300 within 28 days.

28. Given the success of the Applicants we make an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the 2002 Act considering it just and equitable in the circumstances. This order relates to any service charge liability for costs or administration charges in respect of costs if there be one under the lease, and is in respect of those lessees who are named on the application and are the occupiers of Flats 1, 5,6 and 7.

Andrew Dutton

Judge:

A A Dutton

Date: 15th march 2019

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

**Schedule:
Disputed service
charge 2018**

Case reference:

Premises:

7A Odeon Parade

ITEM	COST	APPLICANT'S COMMENTS	LANDLORD'S COMMENTS	FOR TRIBUNAL
Cleaning (Internal)	£2,340	The estimated price in our area is 12 pounds per hour for internal cleaning (the total is around 2 hours for all our premises x 2 times per month, is equal 48 pounds per months and around 576 per year) . Amount in dispute is 1764 pounds. Alternative quotation is provided in Appendix C.		Allow £1,000
Gardening and external cleaning	£1,368	You have not been doing any gardening and external cleaning (please see Appendix B, Figures 5-11) Amount in dispute is 1368 pounds		Allow £250
Bin Hire	£973	We have paid for bin hire, but the rubbish constantly overflowing and seems to be emptied infrequently.		Allow £700
Communal lighting (repairs and electricity)	£1,440	The management company has installed three lights (The price is 25.99 pounds each, total cost 77.99 pounds), those light are directed into the eyes when someone comes to the entrance (ie. they are fitted poorly). The installation work has been included in the CCTV installation work. Amount in		Allowed in full

		dispute is 1362 pounds. Alternative quotation is provided in Appendix C.		
Security	£1,080	The management company has installed three cameras, (the cost of all the cameras as a bundle is 288.98 pounds). The estimate instalation work cost is 274.99 pounds. Total cost is 563.97 pounds. Amount in dispute is 516.03 pounds, because the cameras do not work. Alternative quotation is provided in Appendix C.		Allow £800
Fire risk assessment	£600	We do not have any invoices from the freeholder to show if this is accurate.		Disallow in full
Accountancy	£960	The estimate price is 35 pounds per months and 420 pounds per year. We did not receive any receipts, invoices or other statements. Amount in dispute is 540 pounds. Alternative quotation is provided in Appendix C.		Allow £420

Door entry system	£480	The door entry system does not work as required, it seems to be fitted back to front. The management company has done nothing despite multiple complaints. Amount in dispute is 480 pounds.		Allow £250
Repairs	£720	We do not have any invoices from the freeholder to show if this is accurate. What has been repaired?		Allow £500
Insurance	£1,149	We do not have any invoices from the freeholder to show if this is accurate.		Allowed in full
Management fee @12%	£1,773	The freeholder does very little in terms of management to deserve this fee. The freeholder is also very rude in many communications and often does not respond to communication attempts. Amount in dispute is 1773 pounds.		Allow £400
Sinking funds	£1,200	We do not have any invoices from the freeholder to show if any funds from the sinking fund have been used. What is the total balance of the sinking fund?		Allowed in full
Total:	£14,083	Total disputed amount: 7180.03*		Total allowed £8,103

**Schedule: Disputed
service charge 2017**

Case
reference:

Premises:

7A Odeon Parade

ITEM	COST	APPLICANT'S COMMENTS	LANDLORD'S COMMENTS	FOR TRIBUNAL
Cleaning (Internal)	£2,600	We suspect the management company did not do any internal cleaning for around 6 months, and the estimated price in our area is 12 pounds per hour for internal cleaning (the total is around 2 hours for all internal area twice per month, equaling 48 pounds per month and around 576 per year, so for 5 months we estimate an false spend of 240 pounds). Amount in dispute is 2 360 pounds. Alternative quotation is provided in Appendix C.		£1000 allowed
Gardening and external cleaning	£1,100	No external cleaning or gardening has been provided, please see Figures 5, 6, 7, 8, 10, 13, 14. Amount in dispute is 1100 pounds.		£250 allowed
Bin Hire	£650	We have paid for bin hire, but the rubbish constantly overflowing and seems to be emptied infrequently. Evidence provided in Appendix B (Figure 5,6,7,8 & 11).		Allowed in full
Communal lighting (repairs and electricity)	£850	The management company performed no works in 2017. Amount in dispute is 850 pounds.		Allowed in full
Security	£1,000	The management company performed no works in 2017. Amount in dispute is 1000 pounds.		Disallowed in full
Fire risk assessment	£600	We do not have any invoices from the freeholder to show if this is accurate.		Allowed in full
Accountancy	£960	The estimate price is 35 pounds per months and 420 pounds per year. We did not receive any receipts, invoices or other statements. The disputed amount is 540 pounds. Alternative quotation is provided in Appendix C.		Allow £420
Door entry system	£250	The door entry system does not work as required, it seems to be fitted back to front. The management company has done nothing despite multiple complaints. Amount in dispute is 250 pounds.		Allowed in full
Repairs	£500	We do not have any invoices from the freeholder to show if this is accurate. What has been repaired?		Allowed in full
Insurance	£1,100	We do not have any invoices from the freeholder to show if this is accurate.		Allowed in full

Management fee @12%	£1,150	The freeholder does very little in terms of management to deserve this fee. The freeholder is also very rude in many communications and often does not respond to communication attempts. Amount in dispute is 1150 pounds.		£400 allowed
Total	£10,760	Total amount in dispute: 7 250.00*		Total allowed £6,020