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

Case Reference : **LON/00AH/LSC/2013/0234**

Property : **Flats 2 and 6, 91 Outram Road
Croydon**

Applicant : **Mr G A Sharpe**

Representative : **None**

Respondent : **Mr A R Garret**

Representative : **None**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Judge N Haria
Ms S Coughlin**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 July 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the legal costs in the sum of £2995.00 are unreasonable and therefore not payable by the Applicant to the Respondent.
- (2) The tribunal confirms the decision made in respect of the accountancy fee of £155 in Case LON/00AH/LSC/2012/0395 and finds them to be reasonable and payable for the reasons given in that decision.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the service charge years 2011- 2012 and 2012-2013 in respect of :
 - (i) Accountancy fees of £155.00
 - (ii) Solicitors fees of £2995.00
2. The Applicant seeks a determination as to
 - (i) the liability to pay and the reasonableness of the amounts,
 - (ii) the amount payable, and
 - (iii) when the amount is payable.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. Neither party requested a hearing and the tribunal did not consider a hearing to be necessary so the matter was determined on the papers.

5. Directions in the matter were issued on the 2 May 2013.
6. The tribunal received no response from the Respondent to the application or the directions.

The background

7. The subject premises are self contained flats in a converted house comprising 6 flats.
8. The application follows the determination by the tribunal of the case LON/00AH/LSC/2012/0395 in respect of the service charges for the years 2011/12 and 2012/13. The application relates to the Respondent's legal costs of those proceedings in the sum of £2995.00 as well as accountancy fees in the sum of £155.00.
9. In case LON/00AH/LSC/2012/0395 the tribunal determined that:
 - (i) the accountancy fee of £155 for the service charge periods 2011-2012 and 2012 to 2013 to be reasonable, and
 - (ii) the Respondent may not pass 75% of its costs incurred in connection with the proceedings before the tribunal through the service charge.
10. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The tribunal's decision

11. Having read the evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows:
 - (i) The Tribunal confirms the decision made in respect of the accountancy fee of £155 in Case LON/00AH/LSC/2012/0395 and finds them to be reasonable and payable for the reasons given in that decision,
 - (ii) The Applicant is not liable to pay a contribution by way of a service charge towards the legal costs £2995.00 in respect of the proceedings in case LON/00AH/LSC/2012/0395 .

Reasons for the tribunal's decision

12. The tribunal is satisfied that under the provisions of the Lease the Applicants have covenanted to pay a service charge, defined in the Lease as "a Maintenance Contribution". The Lease provides that the Applicants are required to pay ".....one- sixth of the cost expenses outgoings and matters mentioned in the Fourth Schedule".
13. Paragraph 7 of the Fourth Schedule of the Lease specifies the "...the fees disbursements and Value Added Tax paid to any Managing Agents Accountants and Solicitors appointed by the Lessor ..." fall within the costs expenses and outgoings in respect of which the Lessee is required to contribute.
14. Clause 4(ii)(b) of the Lease provides for the amount of the Maintenance contribution to "..... be ascertained and certified annually by the Lessor's Managing Agents or Accountants (at the discretion of the Lessor) acting as experts and not arbitrators (and whose Certificate shall be final and binding on all parties hereto) at the end of the Lessor's financial year or as soon as may be practicable after that date and shall relate to such year in manner hereinafter mentioned".
15. Clause 4(ii)(c) defines the Lessor's financial year as the period from 24 June in every year to the 23 June. Clause 4(ii)(d) provides for the Lessee to pay to the Lessor "...such sum in advance and on account of the Maintenance Contribution as the Lessor or the Lessor's Managing Agents or Accountants (as the case may be) shall specify at their discretion to be a fair and reasonable interim payment provided that in specifying such interim payment the Lessor may create a reserve fund for future repairs or painting" .
16. Clause 4(ii)(e) The Lease provides that as soon as practicable after the amount of the Maintenance Contribution has been certified the Lessor or the Lessor's Agents shall serve on the Lessee a Notice in writing setting out an account of the Maintenance Contribution payable by the Lessee for the year in question and showing such adjustment as may be appropriate, the provision requires that within 21 days after service of the Notice that the Lessee shall pay to the Lessor any balance found to be payable and that there should be credited to the Lessee any overpayment after making allowance for any reserve fund.
17. The Applicant produced two service charge demands dated March 2013, on for each flat in the sum of £374.58. The demands provide no detail as to what the charge relates to apart from stating that "...This charge forms part of your service and administration charge and is payable on receipt". There is no breakdown of the charge or details as to the period to which it relates. The Respondent has not responded to the application and has produced no details showing what items are included in these service charge demands. There is no evidence to show

that the charge includes a contribution towards the accountancy fees or the legal costs that are the subject of this application. The application does not require and the tribunal does not make any determination as to these service charge demands. Should the Applicant require a determination as to the reasonableness or liability to pay the service charge demands this will have to be the subject of another application.

18. **The Accountancy fee:** The reasonableness and liability to pay the sum of £155 in respect of the accountancy fee was considered by the tribunal in case LON/00AH/LSC/2012/0395 and determined. The Tribunal confirms the decision made in case LON/00AH/LSC/2012/0395 in respect of the accountancy fees. The tribunal appreciates that the Applicant claims he has not received a certified copy of the accounts and so he considers he should not be required to pay his contribution towards the accountancy fees. The fact that the Respondent may have failed to produce the accounts and may therefore be in breach of his obligations both under the Lease and also under sections 21 to 24 of the Act does not entitle the Applicant to withhold payment. As the decision related to an interim charge it is still open to the leaseholder to make a new application in relation to the final accounts for the year. The Applicant should take legal advice as to the appropriate remedy and pursue the Respondent both for a breach of covenant and the provisions of sections 21 to 24 of the Act.
19. **The legal costs:** The lack of any submissions from the Respondent on the matter leaves the tribunal in a difficult position where the tribunal is required to make a determination as to the reasonableness of fees incurred in connection with the proceedings before the tribunal without a breakdown of the work involved or the time taken to deal with the matter.
20. There is no invoice before the tribunal, the only information before the tribunal is the Applicant's claim that the legal costs amount to £2995.00. There is no evidence as to whether this sum is inclusive or exclusive of VAT. There is no evidence that this sum is the amount that was in fact incurred or that the Respondent has demanded that the Applicant contributes by way of service charge towards these costs. Costs must be reasonably incurred and be of a reasonable amount. On the face of it (due to the lack of a response from the Respondent to the directions issued by the tribunal and the lack of submissions from the Respondent) the legal costs appear to be excessive and disproportionate.
21. As a consequence of the paucity of evidence before the Tribunal in relation to the legal costs the Tribunal determines that the legal costs are not reasonable and therefore not recoverable.

Application under s.20C and refund of fees

22. The Applicant made an application for a refund of the fees that he had paid in respect of the application¹. Taking into account the determinations above, the tribunal orders the Respondent to refund £100 in respect of the fees paid by the Applicant within 28 days of the date of this decision.
23. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: N Haria

Date: 17 July 2013

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and 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 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 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) a leasehold valuation 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 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) The jurisdiction conferred on a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.