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

**Case Reference** : LON/00AJ/LSC/2013/0411

**Property** : 64 Ealing Village, Ealing, London  
W5 2NB

**Applicant** : Ealing Village Freehold Ltd

**Representative** : Daniel Tang, solicitor of Crabtree  
Law

**Respondent** : Zoe Salmon

**Representative** : In person

**Type of Application** : Transfer from the County Court for  
the determination of the  
reasonableness of and the liability  
to pay a service charge

**Tribunal Members** : Judge Adrian Jack, Mrs Sarah  
Redmond MRICS BSc (Econ), Mr  
Leslie Packer

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

**Date of Decision** : 21<sup>st</sup> August 2013

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the tenant is entitled to set off the sum of £1,625 against her liability for service charges.
- (2) 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 tenant through any service charge.
- (3) The Tribunal otherwise makes no order in respect of the costs of the proceedings before the Tribunal.
- (4) Since the tribunal has no jurisdiction over county court costs and fees and the other matters in dispute, this matter should now be referred back to the Clerkenwell and Shoreditch County Court under action number 3YK79641.

### **Procedural**

1. By a claim form issued in the Northampton County Court under action number 3YK79641 the landlord sought recovery of £5,237.94 comprising £4,397.94 arrears of service charge and £840 contractual costs, plus court fees and solicitors costs. Upon the tenant serving a Defence the matter was transferred to the Clerkenwell and Shoreditch County Court, who further transferred it to this Tribunal for determination of the issues within the Tribunal's jurisdiction.
2. The landlord was represented by Mr Tang, an in-house solicitor for the managing agents. The tenant appeared in person.
3. The Tribunal gave directions on 30<sup>th</sup> May 2013. The directions provided that there should be no expert evidence. Neither party applied to vary this direction and no expert evidence was adduced.

### **The issue**

4. The only issue for determination by the Tribunal is whether the tenant is entitled to set off the sum of £1,625 which she expended on running a pipe from the existing rising cold-water main to her bathroom. The landlord conceded that these monies had been expended and were reasonable in amount. It disputed its liability for that expenditure.
5. The other sums in issue are matters for the County Court. So far as the service charges are concerned, the landlord on 25<sup>th</sup> December 2013 demanded payments on account of reserves of £1,362.20 and of service charges of £1,318.85. The tenant does not dispute her liability for these

sums; she says that she is paying those sums by monthly standing order. The landlord disputed her entitlement to pay by standing order.

6. We were not asked to determine whether the management fee claimed in the service charge account of £360 is payable, nor the claim for contractual costs of £840. These too remain an issue for the County Court.

### **The facts**

7. The property which is the subject of this application is on a 1930's art deco estate with Grade 2 listing. The estate consists of a number of blocks. The tenant's flat is in a block with three floors. There is a dispute which we did not need to resolve as to whether there were six or seven or eight flats in the tenant's block. It was common ground her flat was on the top floor.
8. The tenant acquired her flat in about 2007. It required complete redecoration. Among the works was a complete refurbishment of the bathroom/WC, involving the removal of the bath and the refurbishment of the shower. The landlord suggested that this was an unauthorised alternation of the bathroom into a wet room. The Tribunal does not need to determine this issue. The works were completed in about 2008.
9. As part of the works the tenant replaced the old shower rose. She said (and this was not disputed by the landlord) that the shower worked perfectly satisfactorily using ordinary water pressure from the cold water header tank in the roof.
10. It was common ground that in late 2011, the landlord employed a firm of plumbers called TAP to do works to the header tank. No evidence was adduced as to precisely what works TAP did.
11. The tenant's evidence, which is born out by contemporary correspondence and which we accept, is that at the time she was not living in the flat, but that when she returned she discovered that the water pressure had dropped very markedly such that she could not use the shower. She informed the managing agents of this in an email dated 2<sup>nd</sup> January 2012.
12. The landlord accepted that if the problem with the water pressure had been caused by the works carried out by TAP, then the tenant could properly claim for the cost of the remedial works.
13. No evidence was adduced from TAP. The most that the landlord could say was that, in an email dated 7<sup>th</sup> March 2012 Mr Lloyd, the managing agent, said:

“[I]t should be understood that the owner has installed a state of the art wet room on to a early twentieth century plumbing system, the shower rose has a high water consumption far in excess of that envisaged at the time Ealing Village was built, in addition the communal supply pipe to the flat appears to have an internal restriction.”

He proposed two options for fixing the problem, the second being the running of a new supply from the existing rising main to the bathroom. This second option was the one adopted by the tenant at a cost to her of £1,625.

14. Mr Lloyd did not give evidence to the Tribunal.
15. Mr Tang submitted that if the reason for the low water pressure was an internal blockage then it would have been within a conduit for the exclusive benefit of the tenant, so that it was not part of the demise: see the First Schedule paragraph (d).
16. In our judgment the tenant has established a case to answer that the works carried out by TAP were responsible for the drop in water pressure. She had adequate water for the period from 2008 until late 2011. It was only after TAP's works that the water pressure dropped. She disputed that the shower rose entailed greater water usage, as Mr Lloyd had claimed.
17. The landlord has not answered that case adequately. The email of 7<sup>th</sup> March 2012 does not account for the period of some three years where there was adequate water pressure. Mr Tang could not give evidence to contradict this. Accordingly we find as a fact that the landlord's works did cause the drop in water pressure.

### **The tribunal's decision**

18. Clauses 2 and 3(1) provide the tenant to pay the rent “without deductions”. Clause 4(4) provides for service charges to be payable as rent. The expression “without deductions” is not sufficient in our judgment to exclude a right of set off. Accordingly in our judgment the tenant is entitled to set off the sum of £1,625 against the service charges otherwise payable by her.

### **Application under s.20C and costs**

19. At the end of the hearing, the tenant applied for an order under section 20C of the 1985 Act. In our judgment the tenant has won the only issue argued before us and it would be unjust for her to pay the costs of the landlord before the Tribunal.

20. The Tribunal does not need to determine whether the tenant would otherwise be liable for those costs. The landlord argued that it was entitled to the costs under clause 3(9) of the lease (the liability to pay the costs of a section 146 notice). The Tribunal is doubtful as to whether the landlord could recover its costs under that provision, because the County Court claim form does not seek forfeiture of the lease, but it does not need to and does not determine this issue.
21. The fees payable to the Tribunal comprise the hearing fee of £150 paid by the landlord. In our judgment the landlord should bear that cost and we make no order for costs in respect of it.

Adrian Jack 21st August 2013

**Name:**

**Date:**

## **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 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) the appropriate 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.

## **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).