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

Case Reference : LON/00AZ/LSC/2013/0556

Property : 42A Mount Pleasant Road SE13
6RE

Applicant : Ground Rent (Regis) Limited

Representative : Ms Tara Clark of Countrywide
Estate Management, managing
agents for the Applicant

Respondent : Ms Mary Mairead McIvor
Mr Kevin Charles Mackie

Representative : Ms McIvor attended and
represented herself

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

Tribunal Members : Dr Helen Carr
Mr T Johnson FRICS
Mrs J A Hawkins MSc

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

Date of Decision : 4th December 2013

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1972.82 is payable by the Respondent in respect of the service and administration charges and the charge for major works for the service charge years ending 30th June 2008 – 30th June 2012.
- (2) The tribunal makes the determinations as set out under the various headings in this 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) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bromley County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years ending 30th June 2008 – 30th June 2012.
2. Proceedings were originally issued in the Northampton County Court under claim no. 2YJO6936. The claim was transferred to the Bromley County Court and then in turn transferred to this tribunal, by order of District Judge Thomas on 19th July 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms L. Vidgeon, Client liaison officer with Countrywide Estate Management at the hearing and the Respondent appeared in person. Ms Vidgeon was accompanied by Ms T Clark, the property manager and Mr M Green, a paralegal with Countrywide Estate management.
5. Ms McIvor appeared and represented herself. When asked why she had not attended the directions hearing, she informed the tribunal that she had been out of the country for the last year, but that once she knew that there was to be a tribunal hearing she had contacted the Applicant and the tribunal by email.

The background

6. The property which is the subject of this application is a lower ground floor flat, one of four, in a converted Victorian house in South East London. The subject property has its own entrance. The Respondent informed the tribunal that it also houses the meters for the other flats so the other lessees have access to the entrance hall to the property.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Respondents hold 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 and will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges totalling £3,365.30 for service charge years ending 30th June 2008 to 30th June 2012 in particular
 - a. Service charge year ending 30th June 2008 - a balancing charge of £147.00
 - b. Service charge year ending 30th June 2009 - £164.53 which is the balance outstanding from a total service charge demand for £571.80 comprising charges for accounting (£30.71), general repairs and maintenance (£35), insurance valuation feed (£172.50) and management fees (£333.59).
 - c. Service charge year ending 30th June 2010 - £77.67 which is the balance outstanding from a total service charge demand for £477.17 which comprised charges for accounting fees (£37.19), general repairs and maintenance (£36.72), management fees (£290.18), out of hours emergency service (£12.65) and reserve fund (£100).
 - d. Service charge year ending 30th June 2011 - £67.09 which is the balance outstanding from a total service charge demand for £591.09 comprising charges for audit fees

(£36.00), general repairs and maintenance (£32.50), management fees (£296.87), out of hours emergency services (£14.10), professional fees (£111.85) and reserve fund (£100).

- e. Estimated demand for service charge for major works demanded in the year ending 30th June 2011 - £2,130.20
- f. Service charges demanded for the year ending 30th June 2012 totalling £778.00 and comprising accounting fees (£36.63), cleaning (£64.80), general repairs and maintenance (£20), management fees (£300) professional fees (£15) and reserve fund (£125).

(ii) The payability and/or reasonableness of administration charges totalling £390 charged as follows:

- a. £120.00 charged on 13th May 2011
- b. £120.00 charged on 10th January 2012
- c. £150.00 charged on 24th January 2012

(iii) the payability and reasonableness of legal costs of £654 plus VAT of £130.80 minus fixed costs of £80 making a total of £704.80.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge demand for year ending 30th June 2008

11. As the Applicant was unable to produce invoices to verify expenditure during this period, which is prior to CEM's management of the premises, the Applicant concedes that the sum demanded of £147.00 is not payable by the Respondent. The Tribunal therefore determines that this amount is not payable by the Respondent.

Service charge demand for year ending 30th June 2009

12. The Applicant is claiming £164.83 in connection with service charges for this period. Ms Clark informed the tribunal that the total expenditure for the 2009 accounting period was £2,287.19, and the Respondent's proportion of that total was £571.80. The Respondent paid £407.27 leaving a balance to be paid by the Respondent of £164.83.

13. The Respondent argues that the charges are not demanded in a way which complies with the terms of the lease and are therefore not payable. She further argues that very limited services have been provided in particular she does not consider that proper maintenance and repair have been carried out. She would like more details to substantiate the charges.
14. The Applicant agrees that limited repair work was carried out during this particular service charge year. The only repair cost put through the service charge was £140 which relates to the clearing of guttering following a blockage which she argues is a reasonable cost. The Respondent accepted this.
15. The remaining costs are made up of management fees, accounting fees and an insurance valuation fee.
16. The tribunal asked the Applicant to explain what work it carried out in return for its management fee of £333.59. The Applicant's representative referred the tribunal to an extract from the generic contract for the management of its properties and to the RICS code to demonstrate the range of management services. She informed the tribunal that the property was visited at least once a quarter. The Applicant was given an opportunity over the lunch adjournment to provide copies of the inspection reports. She was only able to produce one for the year 2013.
17. The Applicant also pointed out that it had taken over management in the October of the service charge year and part of the charges were due to the previous managing agents whose charges were higher
18. The Applicant said that the property fell into the middle range of management fees that it charges across its portfolio. The Tribunal suggested that very little was needed in way of management and was surprised that it did not fall at the lower end of the range. The Applicant argued that the problems with credit control added to the costs of managing the property. When the tribunal probed this argument, it transpired that the only service charge arrears were those of the Respondent.
19. The Applicant argued that the charges for accounting fees and insurance revaluation were payable under the lease, and reasonable items for the freeholder to charge for.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of the balance of service charges for the year ending June 2009 totals £32.19.

Reasons for the tribunal's decision

21. The tribunal looked carefully at the service charges demanded in the year. They consisted primarily of management and accounting fees – indeed these account for % of the charges. This indicated to the tribunal that in reality the property required very little management. It therefore reduced the management fee to £175.00 plus VAT which at that time was 17.5%. The management fee is therefore reduced to £201.25.
22. The tribunal considers that the insurance revaluation is a valid exercise undertaken by prudent landlords to protect their assets. There was no suggestion that the fee charged was unreasonable and therefore the tribunal determined that it was payable.
23. Invoices were produced to demonstrate the payability of the demands for accounts charges. These charges were payable under the lease and reasonable.

Service charge demand for year ending 30th June 2010

24. The Applicant is claiming £77.67 from the Respondents for this period. The total expenditure on the property was £1908.67 and the Respondents' proportion of that total was £477.17. The Respondents paid £399.50 of this.
25. The Respondent makes the same general points in relation to the charges. She accepted the payability of the repairs charges, the payment to the reserve fund and the out of hours emergency service.

The tribunal's decision

26. The tribunal determines that for the service charge year ending June 2010, the Respondent is entitled to a credit of £36.67.

Reasons for the tribunal's decision

27. The tribunal reduced the management fees to a total of £205.63 (£175 plus VAT) on the same basis that it reduced the management fees in the previous service charge year. It also determined that only those accountancy charges made in connection with which there are invoices to an external body are payable.

Service charge demand for year ending 30th June 2011

28. The Applicant is claiming £67.09 from the Respondents for this period. The total expenditure on the property was £2364.36 and the Respondents' proportion of that total was £591.09. The Respondents paid £524.00 of this.
29. The Respondent makes the same general points in relation to the charges. She accepted the payability of the repairs charges, the payment to the reserve fund and the out of hours emergency service. However she had concerns about the professional fees which were charged for the preparation of a property condition report. She pointed out to the tribunal that the details of the property described in the report were not consistent with her property.
30. The Applicant explained that obtaining a property condition report was a valid action undertaken by a prudent landlord. She suggested that the inconsistency between the report and the actual property was probably due to typing errors.

The tribunal's decision

31. The tribunal determines that for the service charge year ending June 2010, the Respondent is in credit to £36.67.

Reasons for the tribunal's decision

32. The tribunal reduced the management fees to a total of £205.63 (£175 plus VAT) on the same basis that it reduced the management fees in the previous service charge year. It also determined that the sum of £111.85 charged for the property condition report was not payable. Having examined this report the tribunal considered that it was superfluous. The information it contained was superficial and could be provided by any reasonably able property manager, particularly bearing in mind the regularity of visits that the Applicant maintains it makes to the property.
33. The remaining charges the tribunal found to be reasonable and payable.

Charges for major works

34. The particulars of claim reveal that the Applicant made a charge of £2130.20 for the estimated cost of decorating works to be carried out to the internal communal area of the property and the exterior of the property. The Applicant carried out the required statutory consultation and the Respondent raises no issue in connection with the s.20 procedure.

35. The Respondent does however raise a number of issues in connection with the decorating works. She informed the tribunal that because the exterior of the property had not been decorated for many years, lessees had taken matters into their own hands. The top two flats had replaced their wooden window frames with PVC frames, and both she and the lessee of the ground floor flat had painted their window frames themselves. This meant that the contractor actually did very little exterior work. He had however painted over a rotten window sill to the Respondent's property, rather than replacing it.
36. The Applicant said that if they had received a full statement of case from the Respondent they would have had the opportunity to visit the property and check the position.
37. The Applicant referred the tribunal to an email she had sent to the Applicant on 18th October 2013 when she amplified upon the defence she had put into the county court. She had not engaged with proceedings earlier as she had been out of the country for some time.
38. The tribunal was very concerned that the Applicant had not put this email into the bundle it prepared. Its response was that by 18th October its case was 95% prepared, and that as the date for a statement from the Respondent had passed it had chosen to ignore this email.
39. The tribunal pointed out that the purpose of the proceedings was to ensure that all the facts were before the tribunal so that a full determination of the issues could be made. The very least that could be expected of property professionals such as the Applicants is that they would contact the tribunal for advice, and that they put the email in the bundle for the tribunal. The tribunal was particularly disturbed that the Applicant had made much of the Respondent's apparent failure to elaborate upon her case, when they were fully aware of the email she had sent them.

The tribunal's decision

40. The tribunal determines to reduce the estimated charge for decorating works by 25% which reduces the charge for the works to £1597.65. This reduction also applies to the final charge made for the works.

Reasons for the tribunal's decision

41. The estimate that the Applicant accepted from the contractor contained very little detail of the works which were to be carried out. The tribunal would have expected that someone from the Applicant would have attended the property to confirm how much work had been done, particularly when they were aware of the concerns of the Respondent

and had made a 2% charge for managing the contract. This had not occurred.

42. Moreover, much to the surprise of the tribunal, not one of the three attendees at the tribunal from the Applicant had attended the property and therefore there was no-one available to give evidence as to the extent of the works. The tribunal therefore determined to accept the evidence from the Respondent as to the extent of works carried out.
43. That evidence demonstrated that far less work had been carried out than the original estimate suggested. Drawing on its own knowledge and expertise, and with the limited information available to it, the tribunal determined to reduce the estimate and the final charge by 25%.

Service charge demand for year ending 30th June 2012

44. The Applicant is claiming £778.00 from the Respondents for this period.
45. The Respondent makes the same general points in relation to the charges. She accepted the payment to the reserve fund and the out of hours emergency service. She pointed out that as she does not have access to the communal hall she receives no benefit from the cleaning, nor was she certain that cleaning was carried out. She challenged the professional fee and the maintenance charge.
46. The Applicant explained that the freeholder was entitled to charge for the cleaning. The maintenance charge was in connection with the digital switch over. The Applicant had organised for the communal aerial to be prepared for the switch over. The Respondent pointed out that there was no communal aerial to the property. The Applicant informed the tribunal that the professional fees charge was for Pier management to check the budget for the property.

The tribunal's decision

47. The tribunal determines that charge for the service charge year ending June 2012 is £399.80.

Reasons for the tribunal's decision

48. The tribunal reduced the management fees to a total of £210.00 (£175 plus VAT) on the same basis that it reduced the management fees in the previous service charge year. It also determined that only those accountancy invoices to external bodies were payable. It deducted the charge in connection with the communal aerial. It accepts the Applicant's argument that it was a mistake to ask the engineer to visit,

but considers that the Applicant, and not the Respondent should bear the cost of that mistake. It deducted the charge made by Pier Management to approve the budget. This was not a necessary or reasonable expense to incur on behalf of the lessees. It determined that the cleaning charges were reasonable and payable.

Administration charges

49. The Applicant is claiming a total of £390.00 from the Respondents for this period. These charges are £120 each for two arrears letters sent on 13th May 2011, and 10th January 2012 and £150 for a referral to the solicitors on 24th January 2012.
50. The Applicant pointed the tribunal to the clause in the lease which entitles the Applicant to costs which can be argued to be preparatory to forfeiture.
51. As a result of the reductions to the service charges demanded during 2011, there is no longer arrears so as to justify the letter of 13th May 2011.
52. There were arrears on 10th January 2012. The letter to the Respondent contained a reference to the possibility of forfeiture proceedings.
53. The tribunal asked the Applicant for details of the work involved in the referral of the file to the solicitors. The tribunal allowed the Applicant time during the lunch adjournment to find these details. However none were available.

The tribunal's decision

54. The tribunal determines to reduce the administration charges to £120.

Reasons for the tribunal's decision

55. The Respondent was not in arrears at the time of the first letter. There is no evidence that any work was involved in the referral to the solicitors and therefore it is not reasonable to make a charge for this.

Legal costs

56. The Applicant included in the particulars of claim a claim for legal costs in addition to the fixed costs. This claim was justified on the basis of the charging clause in the lease.
57. The amount particularised is £704.80.

58. No details are provided to substantiate this claim.
59. The tribunal also considered its payability under the lease. This requires the proceedings to be taken as a step in forfeiture proceedings.

The tribunal's decision

60. The tribunal determines that no legal costs in addition to the fixed costs are payable.

Reasons for the tribunal's decision

61. There is no reference to forfeiture proceedings in the county court particulars. The tribunal considers that the proceedings were issued as part of a debt collection procedure and not as a prelude to forfeiture. The tribunal notes that the Respondent was not a lessee who simply refuses to pay service charges. She has had concerns about balancing charges and major works which have not been addressed. In these circumstances court proceedings for forfeiture would have been inappropriate.

Application under s.20C and refund of fees

62. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

63. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Bromley County Court.

Name: Dr Helen Carr

Date: 4th December 2013

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;
 - (a) 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).