10692

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AD/LSC/2014/0625**
Property	:	**32 Aspern Green, Erith, Kent, DA18 4HY ("the property")**
Applicant	:	**Ms Ruth Baker**
Representative	:	**In person**
Respondent	:	**Gallions Housing Association**
Representative	:	**Counsel Mr L Page**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Also in attendance	:	**Mr S McVeigh Gallions Home Ownership manager** **Mrs J Syrad Gallions Leasehold revenue compliance officer**
Tribunal Members		Ms M W Daley LLB (Hons) Mr K Cartwright FRICS
Date and venue of hearing	:	**9 February 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 March 2015**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the cost of the window replacement in the sum of £4164.50 is reasonable and payable.

(2) The Tribunal determines on a balance of probabilities that the Respondent served a notice of intention to carry out the works in compliance with section 20 of the Landlord and Tenant Act 1985.

(3) That the service charge demand, was served, and was compliant with the Service Charge (Summary of Rights and Obligations) Regulation 2007

(4) The Tribunal finds that the cost occasioned by the Respondent of the hearing is not recoverable under the terms of the lease and accordingly make no order under section 20C of the Landlord and Tenant Act 1985.

(5) The Tribunal makes no order for reimbursement of the Application and hearing fees.

The application

(1) The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges for 2014 for the cost of major works were reasonable and payable.

(2) Directions were given by the Tribunal on 10 December 2014.

The matter in issue

(3) A case management conference was held by the Tribunal on 10 December 2014, directions were given and the matter was set down for hearing on for 9 February 2015. The Tribunal identified the following issues-: (i) whether the landlord had complied with the consultation requirements under section 20 of the 1985 Act (ii) whether the works are within the landlord's obligation under the lease (iii) whether the works constitute an improvement to the flat and if so whether the tenant is required to pay for the cost of the work under the terms of the lease (iv) whether a section 20C order ought to be made.

(4) The relevant legal provisions are set out in the Appendix to this decision.

The background

(5) The premise which is the subject of this application is a one bedroom flat situated in a purpose built block of flats on the Thamesmead Estate. The flat is part of a development which was built in the early to late 1970's. The Applicant's s share of the block cost is 1/6 her share of the estate costs is 1/535.

(6) The Applicant holds a long lease of the premises, pursuant to the assignment of the lease of premises on 5 October 2011. The lease required the landlord to provide services and the Respondent, as leaseholder, to contribute towards the cost of the service, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The Hearing

(7) At the hearing the Applicant represented herself, the Respondent was represented by Mr Page Counsel also in attendance on the Respondent's behalf were Mr S McVeigh Gallions Home Ownership manager Mrs J Syrad Gallions Leasehold revenue compliance officer.

(8) The Tribunal noted that neither party had complied with the directions which meant that neither party had attempted to prepare a single bundle, there were documents which had not been serviced and where service had been affected by the Respondent this had been affected on6 February 2015. The Tribunal noted that the Respondent's had requested an adjournment on 6 February 2015, and that the request had been refused.

(9) The Tribunal found it necessary to provide for further directions which are set out below.

(10) Ms Baker in her evidence informed the Tribunal that she had purchased the property on 5 October 2011 as a Buy to Let and had placed the property through a letting agency; the property had been occupied since 22.10.2015 by her original tenant.

(11) Ms Baker had been assisted by solicitors who were responsible for the conveyancing; they had not informed her that permission was needed for subletting. As Ms Baker had previously used these solicitors, she had assumed that they would notify the Respondent's of her address for service.

(12) In or about the autumn of 2013 Ms Baker had received a service charge demand in the sum of £1891.71. in the course of making enquiries following the service of the demand Ms Baker had been sent copies of

earlier letters (on 29.10.2013) one was a formal notice under section 20 regarding major works which had been served on 20 February 2012.

(13) The Applicant was unaware that the work had in fact already been undertaken, and on making enquiries of her tenant Mr Barry Gayson, she was informed that workmen had attended the flat for access for the purpose of carrying out the work, and as he had not been able to contact her (as he had no details of her address or contact number), he had provided access for the purpose of carrying out work.

(14) Ms Baker had a statement from Mr Gayson, for the purpose of the hearing which purported to deal with the condition of the windows, in his opinion the windows had not needed replacement and he would not have provided access had he been aware that the Applicant had not wished for the work to be carried out.

(15) Ms Baker stated that he did not recall receiving letters or documents for her at the property, although the Tribunal were informed by her that mail was left downstairs to be collected by occupiers/tenants.

(16) The Applicant had not called Mr Gayson to given evidence on her behalf; in his handwritten statement he stated that -: "All *windows wee aluminium powder coated single glazed windows; they all worked correctly and were in good condition...*" Mr Gayson was stated to be in the building trade although no details of his occupation were given, neither had he been called to give evidence on the Applicant's behalf, although part way through the hearing, the Applicant offered to ask him whether he could make himself available.

(17) Ms Baker asserted that the work had not been necessary and that they were improvements and as such was not carried out in accordance with the lease.

(18) The Applicant provided photographs which showed the condition of the premises, she also asserted that there were properties where no windows had been replaced and questioned why it had been necessary to replace her windows when other properties had not had their windows replaced.

(19) She also asserted that the cost was not reasonable, as she had been able to obtain an estimate for replacement of windows in the sum of £1,900.00. Ms Baker had used the firm 'All Kent Windows' before and as such had been satisfied with the quality of their work. She also queried the fact that work had been undertaken at some of the flats and not at other, and that those were the work had not been undertaken appeared to be in good condition.

(20) Counsel for the Respondent referred to the deed of covenant by which the property had been assigned to the Applicant, he noted that although the document gave an address, there was no provision in this document which gave an address for the purpose of giving notice. The Address given was assumed to be Ms Baker's former address and no notice was given of any assignment. Counsel also referred to a letter sent to notify the Respondent's of the change of ownership which referred to the Applicant's home address as her former address (letter from Wallers Solicitors dated 5.10.2011). Counsel submitted that the Applicant had not notified them of her address and that the correspondence had created ambiguity and uncertainty.

(21) The landlord had sent the notices to the property address, it was only when the service charges had been outstanding that further investigations were carried out, and copies of the documents had been sent to the Applicant's correspondence/home address. Mr Page asserted that notices had been served in compliance to the section 20 procedure as required when the work was subject to a qualifying long term agreement, he referred the Tribunal to the notice dated 20.2.2012 and the notice in relation to the qualifying long term agreement dated 14 November 2005.

(22) Mr McVeigh gave evidence on the Respondent's behalf he stated that the property was part of an estate of over 5000 properties built in the 1970's which had firstly been a Greater London Council ("GLC") development which had been subject to transfers. He stated that as such when the properties became subject to right to buy they had been sold under lease, and that there were approximately 12 different leases, some of which included provisions to the effect that the windows and the frames were demised to the leaseholder. Where this was the case, there was no obligation for the leaseholder to agree to replacement of the windows, and there was an obligation on the leaseholder to carry out repairs/replacement.

(23) Mr McVeigh had spoken to the property surveyor who had carried out the survey he stated that the windows were as set out in the letter "beyond their life expectancy and economic repair..." Mr McVeigh did not know what the condition of the windows had been, and stated that he was informed that they were Crittal windows.

(24) Counsel informed the Tribunal that had the Respondent provided an address she would have been able to make representations concerning the need for the replacement of her windows, and that he had evidence which would show that this may have caused the work not to be carried out if was deemed unnecessary.

(25) The Tribunal were referred to clauses 6(b) page 11 that the landlord will keep in good repair and substantial repair and condition(and whenever necessary rebuild and reinstate and renew and replace all

worn and damaged parts" this included the windows in the building and schedule 8 B of the lease imparted an obligation on the leaseholder to pay for the cost of such work as a service charge. He stated that although the glass was demised to the Applicant, there was an obligation on the part of the landlord in respect of the frame. He did not accept that double glazing amounted to an improvement, given that the landlord was obliged to carry out the work.

(26) The Tribunal noted that the directions also identified as a possible issue, whether the landlord had served a compliant demand. The Tribunal noted that this was not raised by the Applicant, however the Respondent was asked to comment on this issue. Mr McVeigh provided information that the summary of rights and obligation had been provided, and that this was set out in an attached sheet. The Respondent stated that a copy of the accompanying sheet could be provided.

(27) Mr Page also dealt with the issue of the cost of the window he confirmed that there was an error in the demand and that the cost should be £4164.50. He noted that the alternative estimate relied upon by the Applicant had no specification and did not provide details of the type of material used etc. The estimate did not deal with the windows to the common parts which the Applicant was obliged to contribute to in accordance with the terms of her lease, there was also a ten year guarantee with the work which was superior to the normal warranty provided. In his submissions the estimate was not to be relied upon as it was not comparing like with like.

(28) The Tribunal noted that one of the key issues was whether the work to the windows was necessary. Although Ms Baker had not raised this as an issue in her application, the Tribunal had no information before it, upon which it could be satisfied that the work was required under the lease, there was a difficulty in that the claim was brought by Ms Baker, and the burden of proving the case fell on her. Nevertheless the Tribunal considered that she had raised an issue concerning the nature of the windows prior to the replacement and that as such, the Tribunal wanted to satisfy itself as to the condition of the window prior to replacement. The Tribunal therefore direct that-(i) **The Respondent provide copies of the survey and copies of the section 20 responses, concerning alternative arrangements which had been agreed with leaseholders concerning replacement of their windows by 16 February 2015 (ii) The Applicant shall provide a reply to any of the issues raised by 23 February 2015.**

(29) By letter dated 16 February 2015 the Respondent sent two statements from Michael Huggett and Julia Syrad.

(30) In Michael Huggett witness statement he stated that the work was undertaken as part of planned maintenance works. He stated that had the Applicant asked for copies of any planned works on purchasing the property in 2011, this would have been provided by the Respondent.

(31) In paragraph 15, of his witness statement he stated-: Where a leaseholder provides good reasons as to why major works should not be carried out to their property, Gallions is content not to carry out the works regardless."

(32) This was set out as being in cases where the work had already been undertaken such as where the windows have already been replaced. In paragraph 19.Mr Huggett stated -: "...it is unlikely that Gallions would have consented not to replace the windows given its obligations under the lease and its statutory obligation to comply with the Decent Homes standard."

(33) In her witness statement Ms Syrad provided a copy of the statutory notice sent to Mrs Baker,(a letter dated 29 November 2013, which dealt with payment of the invoice in respect of works to the block) although this letter dealt with the payment the Respondent's did not provide copies of the survey or detail any responses.

(34) In her witness statement in reply dated 23 February 2015, Ruth Baker denied receiving any invoices in respect of the work until receiving documents in respect of the hearing.

(35) Mrs Baker stated that she had a survey undertaken for the purpose of the mortgage in late 2011, which did not identify the work as being necessary. She also stated that as the glass is demised to the leaseholder, given this it should be the applicant's choice for the window to remain single glazed and anything else should be regarded as an improvement.

The Decision of the Tribunal

(36) The Tribunal have carefully considered the additional submissions of the parties set out above. The Tribunal have noted that the Applicant has as the party bringing this case, has to discharge the evidential burden. The Tribunal are not satisfied that she had appropriate arrangements or put in place arrangements to ensure that the Respondent knew of her address for service, we therefore find on a balance of probabilities that the section 20 notice was complied with, and that had the Applicant received this notice then she would have been entitled to make any of the representations upon which she now relies.

(37) The Tribunal noted that the cost of the windows was considerably higher than the Applicant's own estimate, the Tribunal at the hearing pointed

out that the landlord does not have to accept the lowest estimate for the work. The Tribunal were provided with details of the nature of the work and what was required. The Tribunal noted that the estimate from *"All Kent Windows"* did not deal with all aspects of the works. Accordingly the Tribunal do not consider that it is a like for like estimate.

(38) Although the Tribunal noted that it was not possible for such an estimate to be provided without a full specification, nevertheless in the absence of a like for like quotation, the Tribunal has had to consider whether the costs of work is within a band of charges that the Tribunal would consider reasonable based on the Tribunal's knowledge and experience. The Tribunal determining that having taken into account the work that were undertaken, and the on costs, the cost of the work is reasonable and payable.

Application under s.20C and refund of fees

(39) The Tribunal noted that the Respondent in the witness statement of Julia Syrad indicated that the Respondent was not intending to charge their costs and expenses associated with the hearing as a service charge, however given the Tribunal's findings it is not appropriate to make an order under Section 20C of The Landlord and Tenant Act 1985. This is because the Tribunal not that the cost of such hearings are not recoverable under the terms of the lease.

(40) The Tribunal in light of its findings makes no order for a reimbursement of the application and hearing fees.

Name: Ms M W Daley **Date:** 02/03/2015

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 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.