11251

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2015/0409**
Property	:	**Flat 35, 14-15 Hoxton Square London N1 6NU**
Applicant	:	**FIT Nominee Ltd (1)** **FIT Nominee 2 Ltd (2)**
Applicant's Representative	:	**Mr N Fawcett of Counsel**
Respondent	:	**Mr N Bowman**
Respondents' representative	:	**In person**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr S Mason Bsc FRICS FCIArb**
Date and venue of hearing	:	**11 January 2016** **10 Alfred Place London WC1E 7LR**
Date of Decision	:	**19 January 2016**

DECISION

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1 The Tribunal declares that the amounts charged by the Applicants in respect of service charges for the years 2012-2104 inclusive and as shown on their accounts (pages 74-88) are reasonable in accordance with s27A Landlord and Tenant Act 1985.

2 The Tribunal declines to make an order under Rule 13 of the Tribunal Rules of Procedure.

3 No order is made under s20C Landlord and Tenant Act 1985.

4 The application is remitted back to Clerkenwell and Shoreditch County Court.

REASONS

1 The Applicants are the freehold owners of the property situate and known as 14-15 Hoxton Square London N1 6NU (the building) (page 6) and the Respondent is the leasehold owner of Flat 35 (the property) in the building.

2 The Applicants issued an application in the county court seeking recovery from the Respondent of service and administration charges in accordance with the Respondent's covenant to pay contained in his lease. That application was transferred to the Tribunal by order of Clerkenwell and Shoreditch county court on 7 September 2015. The Tribunal is required to make a declaration under s27A Landlord and Tenant Act 1985 as to the reasonableness or otherwise of the Applicant landlord's service charges, including charges for major works, for the service charge years 2012- 2014.
4 The matter came before a Tribunal sitting in London on 11 January 2016 at which the Applicants were represented by Mr N Fawcett of Counsel and the Respondent appeared in person.
5 In the light of the limited nature of the matters to be decided by the Tribunal an inspection of the property was not considered necessary and was not undertaken by the Tribunal.
6 The Applicants claim is based on s27 Landlord and Tenant Act 1985, relating to the payability of and reasonableness of service charges as between landlord and tenant. Such a matter falls within the jurisdiction of the tribunal.
7 A bundle of documents was placed before the Tribunal for its consideration. Page references in this document are to pages in the bundle.
8 The Respondent holds the property under a lease dated 11 October 2002 made between St George North London Ltd (1) and himself (2). His liability to pay service charges is contained in the Eighth Schedule (page 59) and includes the payment of interest at 4% above bank rate (page 60 paragraph 4). The matters to which the service charge relates are contained in Schedules 6 and 7 with the lessee's proportion of those costs being set out in the lease particulars (page 35) as follows: 2.1338% in respect of estate costs and 2.79% in respect of building costs.
8 In accordance with the Directions the Respondent prepared and served on the Applicants a Scott Schedule (pp.134- 152) . He included in the schedule every item from each of the service charge accounts in respect of which he had at that time a supporting invoice, not just the items he disputed. The Respondent agreed that he did not intend to challenge any of the items where he had not raised a specific query against it on the schedule. The schedule also included a number of duplicated items and items which had not

been charged to the Respondent because, for example, they related to and had been charged exclusively to one individual flat.

9 The Applicants had supplied explanations for each of the queries raised by the Respondent and following a brief adjournment during the hearing the Respondent told the Tribunal that he agreed a large number of the other charges on the schedule. He said that his difficulties had been caused by the Applicants' reluctance to supply him with the relevant invoices and documentation to allow him to verify the charges which he was being asked to pay.

10 Having discussed every item on the Scott Schedule with the Respondent, it appeared that no items remained which were in dispute. That being so, the Respondent has raised no challenge to the figures presented by the Applicants on the accounts for the year 2012-2014 (pages 74-88) which the Tribunal declares to be reasonable in accordance with s 27 Landlord and Tenant Act 1985.

11 The proportion of management charges attributed to the Respondent may have been miscalculated. The service charge provisions set out in the lease do not provide for the amount of the management charge to be apportioned between the 'building' and the 'estate' (see page 35) and in the absence of an express apportionment of the charge between these two items (in respect of each of which a different percentage is payable) it would be equitable to charge the management charge at an average of the two percentages. In the case under discussion the current year's management charge has been apportioned using the higher 2.79% whereas the previous years were calculated at the lower 2.35% resulting in a discrepancy of about £70. The Tribunal does not intend to adjust this discrepancy as overall the Respondent appears to have benefitted from having been assessed at the lower rate of charge.

12 The Respondent made an application under s20C Landlord and Tenant Act 1985 which was opposed by the Applicants. The Respondent has been dilatory in paying his service charge, causing the Applicants to issue proceedings against him and did not at the Tribunal hearing present any effective challenge to the Applicants' case. There is no justification in these circumstances for the Tribunal to make an order under s20C and it declines to do so.

14 The Applicants made an application for an order for wasted costs against the Respondent under the provisions of Rule 13 of the Tribunal Rules of Procedure. This was opposed by the Respondent who said that he had had difficulty in obtaining information from the Applicants as a result of which he had withheld his payments. The Tribunal noted that he had failed to pay his service charge on two previous occasions which had both resulted in Tribunal proceedings with varying degrees of success on his part. The Applicants maintained that the Respondent's conduct of the case had been unreasonable in that he had complied with the Directions in an unreasonable way and had on the day of the hearing conceded most of the previously disputed charges without demur. The Respondent had only received the Applicant's answers to his Scott Schedule on 6 January 2016 which had given him little time to consider his position before the hearing on 11 January. The Tribunal does not accept the Applicants' argument that the Respondent should have conceded the case prior to the hearing. It does agree that the Respondent's attitude towards the payment of his service charges appeared to be deliberately obstructive but in the light of the fact that the Applicants had themselves

applied for an adjournment (which was refused) during the week preceding the scheduled hearing on the grounds that they could not locate some of the relevant invoices, does not consider that an order against the Respondent would in this case be merited. His behaviour was not vexatious or malicious . The question of general costs is a matter for the county court.

15 **The Law**

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).

Orders for costs, reimbursement of fees and interest on costs

Rule 13 The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case,

(ii) a residential property case, or (iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Striking out a party's case

9.—(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a)does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b)does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a)the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b)the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c)the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d)the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e)the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed

striking out.
(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.
(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.
(7) This rule applies to a respondent as it applies to an applicant except that—
(a)a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and
(b)a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.
(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Judge F J Silverman as Chairman
Date 19 January 2016

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.