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

Case Reference : **LON/0000BE/LSC/2013/0765**

Property : **5 Melbourne Grove, London SE22
8RG**

Applicant : **Trendgrove Properties Ltd.**

Representative : **Hamways Ltd.**

Respondent : **Mr R O'Rourke (leaseholder
ground floor flat)
Mr M Dorrell (leaseholder second
floor flat)**

Representative : **None**

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

Tribunal Judge : **F Dickie**

Date of Decision : **27 February 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the expenditure of £1750 plus VAT is reasonable and payable as a service charge, subject to being demanded in accordance with section 20B of the Act. Upon such demand, each Respondent will be liable to contribute a one third share of that expenditure.
- (2) There is no order for the reimbursement of the Applicant's tribunal fee.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of emergency major works carried out in 2013 costing £1750 plus VAT. The relevant legal provisions are set out in the Appendix to this decision.
2. The tribunal issued directions on 10 December 2013 after an oral pre trial review. The tribunal considered the matter suitable for determination without a hearing and, no party having requested a hearing, the matter has been determined on the papers.

The background

3. The property which is the subject of this application is a three storey converted block of flats with communal hallway and stairs. Two of the flat within the building are the subject of long leases. The remaining flat is in the control of the freeholder. Photographs of the building were provided in the bundle of documents prepared for the tribunal. Neither party requested an inspection and the tribunal did not consider that one was appropriate.
4. Hamways Ltd., the managing agent, have brought this application on behalf of their client and explain that, on an initial inspection in May 2012 cracks were identified to the render of the front elevation. It was felt that these did not require immediate attention and could be completed within programmed external decorations in 2015. However, upon a routine inspection on 17 September 2013 the cracks were now observed to be serious and requiring immediate repair as there was loose rendering which was considered to be at risk of falling onto the public footpath below. A report by Mr Robert K Muir, FRICS, was obtained after an inspection on 1 October 2013 and has been provided to the tribunal. He considered there was imminent danger that the cracked rendering would collapse and recommended appropriate repairs.
5. The managing agent obtained two estimates (produced in evidence to the tribunal and to the Respondents) and instructed contractors offering the lower quotation to carry out emergency works of repair at a cost of £1750 plus VAT, which was in excess of the statutory consultation limit. The Applicant, through the managing agent, made an application to this tribunal under s.20ZA of the Act for dispensation from the statutory consultation requirements under s.20 of the Act. The matter was dealt with under case number LON/00BE/LDC/2013/0107. The application was granted and an order made on 20 November 2013. The Applicant will seek to recover contributions to its expenditure in the 2014 accounting year as a service charge.

6. The Respondents each 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, in the manner provided in the Fifth Schedule of the lease. That Schedule defines the landlords "Total Expenditure" to include the expenditure in carryout out their obligations under Clause 5(5). The landlord's covenants as to maintenance and repair of the building are contained in that Clause, including the main structure of the building. Pursuant to the terms of their leases, the leaseholders are each responsible for paying a one third share of the landlord's total expenditure on the building.

Determination

7. Neither of the Respondents has objected to this application or submitted any evidence. There is no reason to believe that the quotations were other than obtained on the open market from contractors who are independent of the landlord. They were based on the surveyor's recommendations and the landlord chose the lower estimate. Based on the evidence, the tribunal is satisfied that the cost of the work is reasonable. Having considered the terms of the lease, the tribunal finds that the works of repair that are the subject of this application are recoverable through the service charge. There is no evidence that the demand has yet been made, and it must comply with the requirements of s.20B of the Act. Upon such a demand, the expenditure will be recoverable in the specified proportion from the Respondents under the terms of their leases.

Refund of fees

8. The Applicant seeks a refund of the fees that paid in respect of the application. However, the Respondents have been cooperative with the landlord's proposals. Pursuant to section 27A(4) of the Act, the tribunal would have no jurisdiction in respect of a matter which had been admitted or agreed by the tenant. There is no evidence that the tenants were asked to confirm in writing that they accepted they would be liable on demand to pay their contribution to this expenditure, and given that there are only two of them the tribunal considers this would have been a reasonable and proportionate step in seeking to avoid litigation. Had this question been put to the leaseholders, and had there been such agreement, there would have been no necessity for this application to be brought and in any event it could have been brought at the same time as the application for dispensation from consultation.
9. In these circumstances, the tribunal does not consider it appropriate that the Respondents should have to refund the Applicant's fee for bringing this application.

Name: F Dickie

Date: 27 February 2014

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 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.