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

Case Reference : LON/00AD/LSC/2013/0702

Property : 2 Oakenholt House Hartslock
Drive, Thamesmead London SE2
9UX

Applicant : Mr James Francis King

Representative : N/A

Respondent : Peabody (formerly Gallions
Housing Association Limited)

Representative : Mr Page of Counsel

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

Tribunal Members : Judge Carr
Mr H Geddes
Mr Piarroux

**Date and venue of
Hearing** : 3rd July 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 15th July 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £5,451.98 is payable by the Applicant in respect of the charges for the major works carried out in replacing the lift.
- (2) The tribunal determines that the charges made for communal electricity are reasonable and payable.
- (3) The tribunal determines that charges made for janitorial costs and general maintenance should be reduced in accordance with its decisions below.
- (4) All other charges made in connection with service charges for the years 2005 – 2013 are reasonable and payable.
- (5) The tribunal makes no determination in connection with service charges for the years 2014 – 2015 or any other future year.
- (6) The tribunal makes determinations as set out under the various headings in this Decision

The application

1. The Respondent issued proceedings in the Northampton County Court under claim no. 3QT92308. The claim was transferred to the Woolwich County Court where summary judgment was issued against the Applicant in this matter on 8th August 2013. On 14th February 2014 following an application from the Applicant the judgment dated 8th August 2013 was set aside.
2. Prior to the decision on 14th February 2014 but subsequent to the decision on 8th August 2013 the Applicant issued an application to the FTT Property Chamber (Residential Property) for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability of service charges demanded by the Respondent from 2005 to date. The tribunal received the application on 9th October 2013. Directions were issued with a timetable that came into force once the summary judgement was set aside.
3. Subsequent to the Directions hearing in this matter Gallions Housing Association Limited merged with Peabody. The tribunal determines that the Respondent in this matter is Peabody.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant appeared in person and the Respondent was represented by Mr Laurence Page of Counsel. Mr Clive Morrison the Leasehold Compliance and Revenue officer for Peabody attended on behalf of the Respondent.

The background

6. The property, which is the subject of this application, is a one bedroom flat in a 12 storey purpose built block comprising 48 flats in Thamesmead. The property benefits from 2 lifts and a janitorial service.
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 Applicant holds 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 will be referred to below, where appropriate.

The issues

9. At the start of the hearing the Respondent applied for an adjournment. The basis for the application was that failure of the Applicant to comply with the Directions and the relatively recent transfer of ownership to Peabody left the Respondent in difficulty in preparing its case. The Respondent also explained that in preparing its case it had noticed that there was a technical defect in the consultation process it had carried out in connection with the major works. It had allowed 29 rather than 30 days for consultation responses. It required time to prepare an application to dispense with the consultation requirements.
10. The consequence of the Applicant's failure to comply with directions was that the Respondent had little information about his challenges to the charges other than that in relation to other properties owned by the Applicant the charges are high.
11. The Applicant agreed with the application for an adjournment. He also wanted an adjournment because personal difficulties including the recent death of his mother had prevented him from preparing the case.
12. The tribunal asked the Applicant if he intended to take a point about the loss of one day in the consultation period. It asked if he was able to demonstrate any prejudice in relation to the defect. The Applicant said that he had suffered prejudice and suggested that as he had lived in

four or five different addresses he may not have received the papers in connection with the consultation. He gave the tribunal no indication of what his prejudice may have comprised.

13. The tribunal adjourned to consider the application.

The tribunal's decision

14. It determined not to grant the application for the adjournment.

The reasons for the tribunal's decision

15. The tribunal took the difficulties faced by both parties in relation to case preparation seriously, nonetheless it determined that it was in the interests of justice that the case proceed. An adjournment would be at a cost to public funds and would be disproportionate; the Applicant's case was essentially that other blocks in which he owned flats were cheaper and there was no indication that, even if the Applicant was given an adjournment of one or two weeks, anything of substance other than this would emerge. In connection with the Respondent's concerns the tribunal made it clear that as the Applicant had not raised specific issues it was not going to expect documentary details of each service charge item. Instead it would look at the figures before it and determine whether the figures appeared to be reasonable. It reminded the Respondent that it had issued proceedings in November 2013 in the county court, and the tribunal expected that it had been able to justify its calculations at that point. It informed the Applicant that the role of the tribunal was not to conduct a forensic examination of the accounts provided by the Respondent and that was not how it would proceed.
16. The tribunal did not consider that anything other than the briefest adjournment would be required for the making of a dispensation application, if one is required at all.
17. The tribunal then focused on the amounts demanded by the Respondent in the service charge years 2005 – 2013. It raised some concerns about those figures in particular
 - (i) The communal lighting charges – in particular that they fluctuated significantly: in one year, 2007 - 8, charges for the block lighting were £13,909.15. In another year, 2011 - 12, charges were £3,289.33.

- (ii) General maintenance, particularly where charges exceeded £250 per year. The tribunal noted that in 2007 -8 the charges for the block were £2,5574.03 and for each flat £532.79
 - (iii) The janitorial charges which peaked at £ 32,422.04 in 2008 -9.
 - (iv) The Respondent asked the tribunal to determine the reasonableness and payability of the major works charges.
18. 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.

Communal electricity charges

19. The Respondent explained that communal lighting charges included the electricity charges for two lifts. The tribunal therefore decided the charges should be described as communal electricity charges.
20. The Respondent was not able to explain how much communal lighting was provided nor why there were such fluctuations in the figures. It was considerably hampered by the fact that many staff employed by Gallions Housing Association had left the organisation following the takeover by Peabody.
21. The Respondent's argument in substance was that the Applicant was paying approximately £2 per week for communal electricity and that sum was reasonable.

The tribunal's decision

22. The tribunal determines that the amount payable in respect of communal electricity over the years in question is £962.43 – which is the total sum that the Applicant has been charged.

Reasons for the tribunal's decision

23. The sum charged for communal electricity is on average £120 per year. This appears to the tribunal, in the absence of evidence to the contrary, to be a reasonable sum.
24. The tribunal asks the Respondent to note that it should in future make clear to lessees when charges are based on estimated bills and how it adjusts charges between different years when bills have been estimated. Such transparency would help lessees understand any apparent fluctuations in charges and enable them to argue that costs should more properly be charged to previous lessees.

General maintenance charges

25. The Respondent produced some detail from the service charge year 2012 – 13. Mr Page explained how work was charged for instance for repairing broken glazing and replacing light bulbs. He explained that the level of general maintenance depended upon the behaviour of the tenants.
26. The tribunal found Mr Page's account of charges for 2012 – 13 plausible. It also noted that the year 2012 – 13 was the lowest year for which the Applicant was charged except for 2008 -9 when no charge was made.
27. The Respondent was unable to answer any questions in connection with the possibility that in some years when charges were much higher work may have been carried out which would have attracted consultation requirements.
28. The Respondent was unable to provide detail on any other service charge year.

The tribunal's decision

29. The tribunal determines that the amount payable in respect of general maintenance is reasonable and payable in those years where the charges fall below £250. For the years where the charges are above £250 (ie 2006 -7 and 2007 -8) the tribunal reduces the charges to £250.

Reasons for the tribunal's decision

30. The evidence before the tribunal indicated that the work had been done. The tribunal was not however satisfied in connection with those years where the charges were higher that consultation should not have taken place.

Janitorial charges

31. The evidence from the Respondent was that £75,000 was being paid by the organisation for an internal contract to provide janitorial services. These services were then recharged to lessees on a piecemeal and proportional basis. This arrangement was inherited from the days when the blocks were local authority or GLC managed.
32. The Respondent suggested that a sum of £20,000 per annum would be an appropriate block charge for janitorial services.

The decision of the tribunal

33. The tribunal considers that reasonable charges for janitorial services are probably around £10,000 to £11,000 per annum. It bases these figures on sums charged in 2005 – 6. The tribunal therefore determines that the charges made for janitorial services in 2005 – 6 and 2006-7 are payable and reasonable. For subsequent years the tribunal determines that the Respondent is entitled to increase those charges by 5% per annum. No charges higher than this are reasonable and payable.

The reasons for the tribunal decision

34. The system used by the Respondent is complex and not transparent. It has not been market tested nor has the Respondent consulted with lessees about the service and the reasonableness of the charges. The tribunal decided that it would accept the charges for 2005 – 6 as a reasonable basis for charges in other years as no explanation had been provided for the exponential increases which took place in later years.

The major works contract

35. Although the Applicant indicated that he considered (i) that the major works costs in replacing the lift were too high and (ii) that he had been prejudiced in the failure to provide the full consultation period, he produced no evidence to substantiate these arguments. Indeed he did not raise the issue of defects in consultation until these were raised by the Respondent.
36. The tribunal pointed out to the Applicant that it was not sufficient to assert charges were unfair, he had to provide evidence that they were unreasonable. Further a mere assertion unsupported by evidence that defects in the consultation process prejudiced the Applicant is insufficient.

The tribunal's decision

37. The tribunal determined that the sum charged for the replacement of the lift was reasonable and payable.

The reasons for the tribunal's decision

38. The tribunal had no evidence before it to demonstrate that the sum charged was not reasonable nor did it have evidence to demonstrate that the Applicant had suffered prejudice in connection with the admitted failure to provide the full consultation period.

Application under s.20C and refund of fees

39. No application was made under s.20C nor was any application made for a refund of the Applicant's fees.

Name: Helen Carr

Date: 23rd July 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 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).