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

Case Reference : **LON/00AF/LSC/2014/0433**

Property : **7 Versailles Road, Anerley, London
SE20 8AX**

Applicant : **Southern Land Securities Limited**

Representative : **Hamilton King Management**

Respondent : **The leaseholders listed in the
application**

Representative : **Not applicable**

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

Tribunal Members : **Ms N Hawkes
Mr D Jagger FRICS**

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

Date of Decision : **29th October 2014**

DECISION

Decision of the Tribunal

The Tribunal determines that the sum of £45,981.85 in total is payable by the respondents (to be apportioned in accordance with the terms of their leases) in respect of the major works described in the applicant's application dated 18th August 2014.

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 respondents in respect of the service charge year 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is described in the application as a semi-detached Victorian house constructed in around 1870 with a basement, ground floor and two upper floors. The house is said to be of typical construction for the period and it has been converted into four flats. Some photographs of the property appear in the hearing bundle.
4. None of the parties requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The respondents holds long leases of flats in the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
6. This matter was said in the application to be urgent on the grounds that the fabric of the property is failing. None of the parties attended a case management hearing which took place on 16th September 2014. However, the applicant sent the Tribunal a letter dated 1st September 2014 in which it informed the Tribunal that Mr Burdett, the leaseholder of the ground floor flat, had requested that the work be undertaken as a matter of urgency because leaking gutters were causing damp within his flat.
7. Directions were issued by the Tribunal on 16th September 2014 which provided for this matter to be determined on the paper track.

The issues

8. The applicant seeks a determination that the total sum of £45,891.85 is reasonable and payable by the respondents in respect of proposed major external repair and redecoration work to the property.
9. The applicant states in its application that two of the leaseholders, Mr Gavin Baldwin and Mr Philip Goodchild, have disputed that the VAT on the contractors' fees is payable by the leaseholders and that they consider the management fee of 5% to be unreasonable. These issues were raised in correspondence prior to the issue of this application.
10. Paragraph 7 of the Directions of 16th September 2014 provides:

"The Respondents shall on or before 3 October 2014 provide to the Applicant a statement of case setting out why they consider the 5% management fee to be excessive or not payable. At the same time they shall provide evidence to support their statement and provide authorities or any other documents on which they wish to rely. This will be regarded as the Respondents' case."
11. Paragraph 8 of the Directions of 16th September 2014 provides:

"If any Respondent wishes to contend that the works themselves are not necessary or reasonable then they shall on or before 3 October 2014 provide to the Applicant a statement setting out those items that are disputed and why, together with copies of any documents on which they wish to rely to support their case."
12. Notwithstanding these clear directions, none of the respondents have submitted a statement or any other document opposing the applicant's case that that the total sum of £45,891.85 is reasonable and payable. Accordingly, the applicant's case has not formally been challenged before the Tribunal.
13. The applicant confirms in its statement of case that it has sent copies of the bundle to all four leaseholders and to Mr Dennis Baldwin FRICS who has been acting on behalf of Gavin Baldwin and Philip Goodchild.

The Determination

14. The Tribunal notes that none of the respondents has sought in these Tribunal proceedings to pursue the argument that that the VAT on the contractors' fees does not form part of the costs and expenses incurred in complying with the covenants contained in the second schedule to the lease or the argument that the management fee of 5% is unreasonable.

15. In fact, as stated above, none of the respondents attended the case management conference of 16th September 2014 and none of the respondents has submitted any written submissions or evidence opposing any aspect of the applicant's application.

16. The Tribunal has carefully considered all of the documents contained in the bundle and it is satisfied that the total sum of 45,981.85 claimed by the applicant falls within the reasonable range of charges for the work in question. Accordingly, the Tribunal finds that the sum claimed by the applicant is reasonable and payable.

Judge N Hawkes

Date 29th October 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.