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

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| **Case Reference** | : | **LON/00AM/LSC/2013/0756** |
| **Property** | : | **21a Ardleigh Road, London N1 4HS** |
| **Applicant** | : | **Anthony Connell** |
| **Representative** | : | **None** |
| **Respondent** | : | **Hackney Homes** |
| **Representative** | : | **None** |
| **Type of Application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge S O'Sullivan** |
| **Date and venue of Hearing** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **7 January 2014** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal determines that the Applicant is liable to contribute to the cost of the fire protection works.

(2) The tribunal finds that the cost of the fire protection works in the sum of £250 is reasonable.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(4) The tribunal makes no order in respect of the Respondent's costs of the application.

## 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 the service charge years 2012/13. The charges relate to the cost of block repairs in the sum of £296. However the Applicant asks that the tribunal make a determination on the construction of his lease generally as to whether he is liable to contribute to charges in respect of the internal hall area.

2. The Applicant holds a lease of the property known as 21A Ardleigh Road, London N1 4HS (the "Property") dated 6 November 1989 and made between the parties (the "Lease"). The Property is a one bedroom flat contained within a block known as 21 Ardleigh Road (the "Block").

3. Directions were made dated 8 November 2013 which set out steps to be taken by the parties and provided for the application to be considered by way of a paper determination in the week commencing 6 January 2014.. A bundle was lodged containing statements lodged on behalf of both parties.

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

## The Respondent's case

5. The application was directed to stand as the Applicant's statement of case and the Respondent made a statement in response. The Respondent set out the charges in dispute as follows;

- Remedy the front door entrance £22.13

- Works required to meet fire regulations (internal, communal, decoration); three components of existing wallpaper covering n the communal stairs replaced by materials that give a surface spread of flame rating of National Class O classification of linings, and five components of cupboards in communal staircase fitted with a 30 minute fire resisting and lockable door, hot and cold smoke seals fitted to door, "Fire Door Keep Locked Shut" notice on the door £250

- Fault with front door entrance £24.63

6. The works required to meet fire regulations is said to refer to works carried out to the communal area of the block, the total cost being £6,137.88. No section 20 consultation was carried out and the cost was capped to £250.

7. The Respondent relies on the following provisions of the Lease

8. The Third Schedule defines the reserved property as *"all those areas, forecourts, refuse, chutes, fences, walls and the halls, staircases, lifts (if any) landings steps, passages and other parts of the Block which are used in common by the owner or owners or occupiers of any of the flats forming the Block...also the walls dividing the flats from the common halls...in the Block"*

9. Clause 1(i) and (iv) of the Ninth Schedule obliges *"the Lessor at the Lessee's expense to keep the property in good and substantial repair and condition 9and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts)*

   *(i) The main structure of the Block all exterior and party walls and structures and all walls dividing the flats from any other flat or from the common halls staircases landing steps and passages in the Block..and all doors therein save such doors as give access to individual flats".*

   *(ii) All such parts of the Reserved property not hereinbefore mentioned and all fixtures and fittings therein"*

10. Pursuant to clause 3 the lessee covenants to "*Pay to the Lessor such annual sum as may be notified to the Lessee by the lessor from time to time as representing the due and proper proportion of the reasonably estimated amount required to cover the cost and expenses incurred or to be incurred ..by the Lessor in carrying out its functions contained n or referred to in this Clause and Clauses 6 and 8 and in the covenants set out in the Ninth Schdule hereto..*"

11. The Respondent acknowledges that it reached an agreement with the Applicant in relation to a previous case before the tribunal reference LON/OOAM/LSC/2012/0523 not to charge the Applicant for block charges in respect of which he does not benefit. This was confirmed to the Applicant by a letter dated 13 September 2012 and in an email to the tribunal of the same date.

12. The Respondent says that the hallway forms part of the reserved property as defined in the Lease and that the Applicant is liable for these charges in principle. However it says that in accordance with the agreement dated 13 September 2013 it will not seek payment of the works to the front entrance door and the fault with the front entrance door as set out above. It accepts that the Applicant has a street entrance property and does not benefit from these works or the use of the block entrance door.

13. The Respondent asserts however that the Applicant is liable for the works required to meet Fire Regulations which were carried out in response to a fire risk assessment. They are carried out to prevent an outbreak of fire through the whole block and therefore benefit the Applicant. It is said that it is reasonable for the Respondent to foresee and to protect against a fire in the communal area. The Respondent relies on correspondence setting out its position dated 9 October 2013, 24 October 2013 and 7 November 2013.

14. The Respondent also emphasises that the works are a reasonable cost and in fact it seeks only £250 which is less than the cost of the works.

## The Applicant's case

15. The Applicant made a statement in response to the Respondent's statement of case.

16. It is common ground that the parties have agreed that no charges for block services will be passed to the Applicant from which he does not benefit.

17. The Applicant says that he has never paid service charges for this part of the property for the whole 24 years during which he has been a leaseholder.

18. The basement flat is said to be part of a converted Victorian house and has its own private entrance at the side of the property. A standard form of lease was used on purchase and the Applicant was informed that "in common" means people have use of or access to the area in question". The Third schedule refers to parts of the block used in common by owners or occupiers and says that he cannot access this area and it is not common to him.

19. The Applicant also disputes liability as he says the works are done to prevent fire spreading allowing the occupants of flats B, C and D to escape in the event of a fire. As the Applicant's flat has 3 exits he does not gain any benefit. None of the repainted surfaces are within his property so he is offered no protection, in addition he says that he cannot see the fire notices.

20. Also it is said that he was not charged for the last internal redecoration works and says surely these complied with fire protection regulations. The Respondent says however that these works did not include any fire safety works.

21. The Applicant also challenges the reasonableness of the works, suggests there is duplication and points out that there has been no independent tendering so there is no evidence of any competitive quotations. The Respondent denies there was any duplication and says that the works were broken down and charged separately.

## The tribunal's decision

22. The only charges before the tribunal were the fire safety costs of £250, the Respondent having conceded the charges in respect of the works to the entrance door.

23. The tribunal found that the Applicant is liable to contribute to the fire protection works. It further found that the cost of those works in the sum of £250 was reasonable.

## Reasons for the tribunal's decision

24. Pursuant to the provisions of the Lease set out above the Applicant is liable to contribute to works to the reserved property which would include the fire protection works. However the Respondent has entered into an agreement with the Applicant by email dated 13 September 2012 by which it agrees that it will only seek to pass on block costs which are of benefit to the Applicant. The tribunal considers that the Respondent is by virtue of that agreement estopped from relying on the provisions of the Lease and is governed by that agreement in relation to the block costs.

25. The tribunal then went on to consider whether the fire protection works are of benefit to the Applicant. It accepted that the works aimed to protect the Block as a whole from the risk of the spread of fire. As the Property is contained within the Block it would benefit in principle from the risk of fire spreading down to the basement level. In this way they can be differentiated from general works of repair and redecoration which would not benefit the Applicant in any way. In any

event it is likely that the extent of any ongoing fire protection works will be minimal and they are not likely to constitute annual works.

26. The Applicant also challenged the reasonableness of the cost of the fire protection works on the basis that they were not the subject of competitive quotations. This challenge was raised late in the day in the response to the Respondent's statement in reply and was not an issue identified in the directions. In any event however the Applicant has failed to provide the tribunal with any alternative evidence to suggest that the cost of the works was too high and in the absence of such the tribunal has found the cost to be reasonable.

**Application under s.20C**

27. No application was made by the Applicant for a refund of the fees that he had paid in respect of the application[1].

28. The Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that no order should be made under section 20C.

29. in its statement of case the Respondent wrote that *"the Respondent seeks its costs in defending this application"*. The tribunal was not provided with any detail of the Respondent's costs nor any grounds upon which it was submitted that any order for costs should be made. Accordingly the tribunal declined to make any further order for costs.

**Name:** S O'Sullivan **Date:** 7 January 2014

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

## 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).