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

Case Reference : **LON/00AY/LSC/2013/0619**

Property : **Flat A, 31 Ellora Road, Streatham,
London, SW16**

Applicant : **Mr Z Benveniste**

Representative : **Circle Residential Management**

Respondent : **Mr P Kruger**

Representative : **In person**

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

Tribunal Members : **Judge I Mohabir
Mr T Johnson**

**Date and venue of
Hearing** : **13 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 November 2013**

DECISION

Introduction

1. The Applicant has made two consolidated applications under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination as to the Respondent’s liability to pay and/ or the reasonableness of the following service charges:
 - (a) interim service charges for the year ending 31 December 2013 in the sum of £1,900, of which the Respondent’s liability is £1,140.
 - (b) the estimated cost of demolishing and rebuilding a front boundary wall in the sum of £1,400.
2. The Respondent is the lessee of the subject property pursuant to a lease dated 18 February 2003 for a term of 99 years from that date (“the lease”). Where appropriate, the relevant terms of the lease are referred to as to their meaning and effect in this decision.
3. On 26 September 2013, the Tribunal issued Directions, which have been complied with by the Applicant. The Respondent has not complied with any of the Directions nor has he engaged in this litigation in any way. The Tribunal also directed that the applications be determined solely on the basis of the statements of case and other documentary evidence filed and served by the parties unless an oral hearing was requested. No such request has been made by either party.

Relevant Law

4. This is set out in the Appendix annexed hereto.

Decision

9. The Tribunal’s determination took place on 13 November 2013 and each application was considered in turn.

Interim Service Charges

10. The estimated heads of service charge expenditure claimed by the Applicant for the year ending 31 December 2013 are:

(a) Building Repairs	£164
(b) Buildings Insurance	£800
(c) Year End Accounting	£180
(d) Management Fee	£756
11. Of the total estimated expenditure of £1,900, the lease makes the Respondent contractually liable to pay 60% of the expenditure, which places his liability at £1,140. This has been demanded on behalf of the Applicant on 30 July 2013 and remains unpaid.
12. The Applicant’s case as to how the Respondent’s liability for the interim service charges arises and how it is contended they are reasonable are set out in a statement of case dated 10 October 2013 prepared by Circle Residential Management, the managing agent. It is not necessary to set out the details of the submissions made on the Applicant’s behalf as

they are self-evident and are, in any event, unchallenged by the Respondent.

13. Accordingly, the Tribunal makes the following findings:
- (a) that the Respondent is contractually liable to pay the estimated service charges variously under clauses 3.1, 1.18 and 1.20 under the lease.
 - (b) that the estimated heads of expenditure are relevant service charge expenditure incurred pursuant to clauses 1.1 and 4 of the lease.
 - (c) that the estimated cost of building repairs, buildings insurance, year end accounting and management fees are reasonably incurred and reasonable in amount.

Repairs to Front Wall

14. The Applicant's evidence as to the need to demolish and rebuild the front wall is also set out in the statement of case dated 10 October 2013.
15. The Tribunal accepted the Applicant's evidence that the wall had a large crack and could only be repaired by the wall being demolished and rebuilt. The Tribunal, therefore, concluded that the proposed expenditure is reasonably incurred.
16. As to the estimated cost, the Tribunal was also satisfied that the Applicant had carried out statutory consultation under section 20 of the Act in relation to the proposed work. The Tribunal was satisfied that the Applicant had obtained two estimates of £1,400 and £1,500 respectively. The Tribunal found the lower estimate of £1,400 to be reasonable and that is the sum allowed. Of course, the Respondent's liability for this expenditure will be 60% of the overall estimated amount.
17. It should also be noted that paragraph 4 of the Second Schedule of the lease only permits the landlord to recover payment of service charges from the lessee on 1 January and 1 July in any given year. Therefore, it seems that the Respondent's liability to pay for the proposed work to the front wall would not arise until 1 January 2014.
18. Finally, the Tribunal should make it clear that, by approving the estimated costs that are the subject matter of these applications, it does not also find that the actual expenditure is reasonable.

Fees

19. The Applicant has paid in total the sum of £250 (£125 each) to the Tribunal to have the applications issued and heard. However, the Tribunal considered that the application in relation to the front boundary wall to be unnecessary given that statutory consultation had already been carried out regarding the proposed work and it should simply have been proceeded with by the Applicant. Therefore, the Tribunal considered that it was reasonable to allow only the fee of £125

paid in relation to the application concerning the estimated service charges and orders that the Respondent reimburse this sum to the Applicant within 28 days of the date of this decision.

Judge I Mohabir
13 November 2013

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.]