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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/LSC/2015/0125**
Property	:	**20 Scales Road London N 17 9HA**
Applicant	:	**London Borough of Haringey**
Representative	:	**Mr E Walters of Counsel**
Respondent	:	**Mr Nileshkumar A Patel & Ms Mitaben Patel**
Representative	:	**N/A**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Carr** **Mr Taylor FRICS** **Mrs Turner JP**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**1st September 2015**

DECISION

Decisions of the tribunal

(1) The Tribunal determines that the sum of £22,483.01 is payable by the Respondent in respect of the service charges for the major works.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Edmonton.

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 Respondent in respect of the major works.

2. Proceedings were originally issued in the County Court Business Centre under claim no. A1QZ140E. The claim was transferred to the Edmonton County Court and then in turn transferred to this tribunal, by order of District Judge Goodman on 19th February 2015.

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

The hearing

4. The Applicant was represented by Mr Edmund Walters of Counsel at the hearing and Mr Patel the first Respondent appeared in person and represented Mrs Patel the second Respondent. Also attending for the Applicant were Mr R. Levett, Mr M. Bester and Ms P. Hinds. Mr Patel was accompanied by Mr Royer as a litigation friend.

5. Oral evidence was provided by both Mr Bester and Ms Hinds for the Applicant and Mr Patel for the Respondent on 27th July 2015. The Tribunal reconvened to consider further documentation and submissions on 26th August 2015.

The background

6. The property which is the subject of this application is a three bedroom flat in a purpose built block comprising three floors.

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 Respondent 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 and will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties agreed that the issues identified for determination as follows:

   (i) The payability and/or reasonableness of service charges totalling £23,483.01 relating to major works carried out to the block in 2012/13 . In particular

      a. Mr Patel argues that he is not liable for service charges because he did not sign the original lease

      b. Mr Patel argues that if he is required to pay service charges the Council should bear a proportion of the costs it seeks to recover through the service charges because it derives a benefit from the works

      c. Whether there has been a breach of the consultation requirements under Schedule 1 and Schedule 4 Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations). In particular Mr Patel argues that the Council has

         i. Failed to state how it has had regard to observations received and

         ii. Failed to invite leaseholders to nominate an alternative contractor

      d. Whether documents produced by the Applicant following a direction for disclosure were inadequate because they did not include audited accounts,

e. Whether the costs of the works are excessive.

f. whether the Applicant whilst carrying out the relevant works to the roof, caused damage to the Respondent's property due to water ingress?

g. And if so, whether the cost of such works should be set off against the sums claimed by the Applicant

10. During the course of the hearing a further issue arose, namely whether the contract for the major works had been issued during the lifetime of the Qualifying Long Term Agreement.

11. 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.

The Respondents' liability under the lease

12. The Respondent argues that he is not liable under the lease because he did not sign the lease. He further argues that if he is liable under the lease the Applicant should bear a proportion of the costs because it derives a benefit from the completion of the works. He pointed to the concession given to owner occupiers who had more time to pay their service charges in connection with major works to demonstrate that the Applicant had some flexibility and that not everyone was treated the same by the Applicant.

13. The Applicant argues that of course the Respondents are bound by the service charge clauses of the lease. The Respondents signed a Deed of Covenant supplemental to the lease which includes at clause 2 a covenant that the Assignee shall pay the rents reserved by and perform and observe the covenants and the conditions contained in the lease.

14. The Applicant makes further arguments in connection with the common law rule in Spencer's case (1583) 5 Co. Rep 16a and privity of estate. The Applicant also points out that the lease provides for the proportions that the Respondents are required to pay as their contributions to major works.

The tribunal's decision

15. The Tribunal determines that the failure to sign the lease does not relieve the Respondents of the responsibility for payment of service charges.

Reasons for the tribunal's decision

16. The Tribunal accepts the legal submissions of the Applicant. It notes that the Respondents have always paid their service charges in the past. It also notes that Mr Patel did not produce any legal argument in connection with his assertion that the Applicant should bear some of the costs of the major work. He relied on what he saw as common sense.

Compliance with the consultation requirements

17. The Respondents argue that there was a failure to comply with the relevant consultation requirements. Mr Patel pointed in particular to the provisions of Schedule 1 and Schedule 4 of the Consultation Requirements.

18. The Applicant argues that those Schedules do not apply because the works were covered by a Qualifying Long Term Agreement ('QLTA') which required public notice. The notice of intention to enter into a QLTA indicated that the QLTA was to commence in January 2007 and to run for a period of four years. In the event the QLTA commenced in January 2008.

19. The Applicant pointed out that in the particular circumstances of a QLTA which requires public notice the relevant schedule is Schedule 2. It argued that it had fully complied with the requirements of that Schedule.

20. Mr Patel disputed that the QLTA required public notice, he disputed that advertising the proposed QLTA in the local free newspaper was appropriate, and he considered that he should have had an opportunity to nominate a contractor.

The tribunal's decision

21. The Tribunal determines that the relevant consultation requirements are those set out in Schedule 2 to the Regulations and that the Applicant complied with those requirements.

Reasons for the tribunal's decision

22. The Tribunal accepts the submissions of the Applicant. In particular the Tribunal considered that the advertising of the intention to enter into the QLTA via the local free newspaper was appropriate. It notes that Mr Patel made no legal points in connection with his argument.

Failure to comply with directions requiring audited accounts

23. The Applicant agreed that it had failed to comply with the direction requiring audited accounts. This was due to a mistake made by its representative at the directions hearing who thought that audited accounts were available. In the event it transpired that audited accounts had not yet been produced. It apologised to the Tribunal and Mr Patel for its mistake but argued that it was not material.

24. Mr Patel argued that the Applicant should have complied with the directions and that there was no excuse for its failure.

The tribunal's decision

25. The Tribunal determines that the failure to comply with the direction requiring audited accounts is not material to its determination of this matter.

Reasons for the tribunal's decision

26. There were no audited accounts available and the Tribunal accepts that a genuine mistake was made which in the event is not material.

Whether the costs of the works were excessive

27. Mr Patel argued that the costs of the works were excessive. He produced some estimates which suggested that the works could have been carried out more cheaply. For instance for the roof recovering works the figure he produced (from Premier Roofing Systems) was £20,678.35p compared with the £105,176.14p which was the Applicant's figure. The scaffolding figure he produced was £25 per linear metre.

28. Mr Patel produced a report from a Mr Heasman, a building surveyor, Mr Heasman inspected the site and produced figures which indicated that the costs for the roofing works should be between £45,120 and £58,000. Mr Heasman also carried out a similar exercise in connection with the scaffolding. The figures that he obtained varied between £12,000 and £18,600 compared with the Applicant's contractors costs of £52,600.49

29. The Applicant disputes Mr Patel's evidence. It points out that the quote provided from Premier Roofing Systems is not 'like for like' and was expressed to be 'subject to survey and confirmation'. It argues that the quote was plainly only indicative and not based on a detailed survey. It also points out that prices vary depending on materials used, which are not specified in the quote.

30. As far as the scaffolding costs are concerned it argues that its costs are based both on coverage and the provision of specific facilities. The quote provided by the Respondents is just measured in linear metres and does not make any reference to height. It notes that it is not clear from the quote if or how there would be adherence to Health and Safety legislation.

31. The Applicant's specification includes the provision of a temporary roof which accounts for £21.537.24p of the total costs which is not provided for in the Respondents' quote. There was also no allowance for a hoist.

32. The Respondent argued there was no need for a temporary roof as the roof was being renewed and not replaced. He considered (and he has some experience of building work as his family property company deal with over 100 properties) that the work could have been carried out in small sections thus avoiding the need for a temporary roof.

The tribunal's decision

33. The Tribunal determines that costs of the major works were not excessive.

Reasons for the tribunal's decision

34. Whilst the Tribunal has some sympathy with the concerns of the Respondent, it considers that once the broader responsibilities of the Applicant to its lessees and tenants and indeed the general public, are taken into account, the costs of the major work contract are not excessive.

35. The Tribunal also notes that the selection of the contractors was based upon a tendering exercise.

Whether damage was caused to the Respondents' property during the course of the work and if so should the costs incurred be offset against the service charge demand

36. The Respondent informed the Applicant that damage had been caused to his property during the course of the works and he made a claim on the Council's insurers . The Respondent produced an invoice for £4680 which he stated was for the work carried out to redecorate the whole flat subsequent to the leak. This claim was refused by the Council's insurers.

37. At the hearing the Applicant denied that such a complaint was made at the time of the major works. However subsequently it appears that the complaint was handled by a Mr Michael Baker and not Mr Michael

Bester as the Respondent had thought. This explains Mr Bester's denial of receipt of the complaint.

38. Nonetheless the Applicant continues to argue that there is insufficient evidence of either damage to the property which was related to or closely linked to the works being carried out or the precise extent of works required to rectify the leak rather than improve the property, and no argument that the Applicant was in breach of covenant under the lease entitling Mr Patel to a set-off.

The tribunal's decision

39. The Tribunal determines that Mr Patel is entitled to a set off of £1000 in connection with the leak.

Reasons for the tribunal's decision

40. On the balance of probabilities there is evidence that there was a leak to the property. Mr Patel made a claim and the Council did take some action in response. The insurers did visit and therefore there was some recognition there was internal damage. The Tribunal notes that the Council does not appear to have handled the complaint that Mr Patel made appropriately. On the other hand the Tribunal is not satisfied that the claim for £4680 can be substantiated for the works which would be necessitated by the leak. It therefore determines that £1000 is an appropriate sum in compensation for damage following the leak.

Whether the contract was issued during the period covered by the QLTA

41. During the course of the hearing Mr Patel questioned whether the works carried out under the auspices of the QLTA were actually covered by the QLTA as he argued it had expired.

42. The Applicant was given some time to respond to this argument as it had not been previously raised. However the Tribunal considered it raised a significant point which needed a response.

43. In its further submissions the Applicant provides evidence that the QLTA was for a period of 4 years, that it commenced on 1st January 2008 and expired on 31st December 2012. The Tribunal thinks that the Applicant means 2011.

44. The Applicant refers to and produced a contract award letter dated 23rd November 2011 which shows that Lovell Partnership Limited was successful in a mini tender and that it was commissioned to carry out the works of delivering the Haringey 2012 – 2013 Decent Homes

Programmes. This it argues demonstrates that the works were commissioned during the lifetime of the QLTA.

The tribunal's decision

45. The Tribunal determines that the contract was awarded during the lifetime of the QLTA

Reasons for the tribunal's decision

46. The Tribunal accepts on the balance of probabilities that the QLTA did not commence until 1st January 2008 although it has some concerns about the quality of the evidence provided and would have preferred to have had sight of the QLTA itself. On the other hand it notes that this was a point raised by the Respondent very late in the proceedings.

47. Having accepted that commencement date the letter to Lovell Partnership Limited demonstrates that the works to the property were commissioned during the lifetime of the QLTA.

Application under s.20C and refund of fees

48. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having read the submissions from the parties and taking into account the determinations above and the fact that Mr Patel has always in the past paid his service charges, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

The next steps

49. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court at Edmonton.

Name: Judge Carr **Date:** 1st September 2015

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).