10857

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2014/0375**
Property	:	**Flats 1 – 6, 2 York Way London N1 9AA**
Applicants	:	**Mr J Gill (Flat 1),** **Mr C. Emechele (Flat 2)** **Ms M. Bell (Flats 3 and 5)** **Mr W. Douglas (Flat 4)** **Ms R. Samsudin (Flat 6)**
Representatives	:	**Ms M. Bell and Mr J. Gill**
Respondents	:	**LLOF Managing Trustees Limited(1)** **Dynasty Prime Investments Company Limited (2)**
Representative	:	**Mr Robert Brown of Counsel**
Type of Application	:	**Service charges Section 27A and 20C Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Lancelot Robson** **Mr T. N. Johnson FRICS** **Mr P. Clabburn**
Date and venue of Hearing	:	**3rd and 4th March 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20th April 2015**

DECISION

Decision Summary

(1) No decision has been made relating to the service charges in dispute in the service charge year ending 29th September 2005, as this is a year when neither of the Respondents were the landlord. The First Respondent became the landlord in December 2005, and the Second Respondent became a co-landlord in November 2011.

(2) The service charge demands re-issued by the Respondents to the Applicants on various dates in 2014 were valid. The previous demands were non compliant with Section 47 of the Landlord and Tenant Act 1985, On the evidence, there appears to be no breach of Section 20B of the Landlord and Tenant Act 1985.

(3) Service charges (by subject) following Scott Schedule:

a) Cleaning (2006 – 13) Reasonable and payable as demanded

b) Internal Repairs (2006 – 2013) - reasonable and payable as demanded

c) Estate Charges (2008 - 2013) - reasonable and payable as demanded

d) Audit Fees (2007) - reasonable and payable as demanded

e) Health and Safety Inspections (2007 - 2013) - reasonable and payable as demanded

f) Buildings Insurance (2006 – 2013) – reasonable and payable as demanded

g) Lamps 2011 -13 - reasonable and payable as demanded

h) Management charges (2006 – 2013) Service inadequate for fees charged – reduced to £275 (plus VAT) per unit for each Applicant – 275 x 6 = £1,650 plus VAT.

(4) Estimated service charges 2013/14 – reasonable and payable as demanded with exception of management charges, to which paragraph 3h) above applies.

(5) Estimated service charges for 2014/15 – reasonable and payable as demanded.

(6) The parties shall make any written representations they wish relating to the Section 20C application after this decision had been issued.

(7) The Tribunal made the other determinations as set out under the various headings in this Decision.

(8) County Court cases numbered A40YM981 and A39YM312 shall now be referred back to the County Court at Northampton to deal with outstanding matters.

The Application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to whether service charges for the years commencing on 29th September 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and estimated service charges for the years commencing on 29th September 2013 and 2014 are reasonable, reasonable in amount, and payable pursuant to the terms of a (specimen) lease dated 18th February 2005 (the Lease). The Applicants have also made a Section 20C Application to limit the landlords' costs chargeable to the service charge.

2. County Court claims were commenced on 23rd May 2014 by the Respondents relating to similar (but not identical) subject matters from 2008 onwards against Mr Gill and Mr Douglas under case numbers noted above. The Applicants lodged this application on 18th July 2014. The court proceedings were transferred to the Tribunal by consent of the parties for decision on the service charge matters in this application. At the hearing some discussion took place on the terms of the court orders made, since the Court had apparently made two orders on each case, the first being a consent order to transfer the case to this Tribunal dated 26th September 2014, and a second order of its own motion on 2nd October 2014 in slightly different terms. However the parties and the Tribunal are satisfied that the court's intention was to transfer those matters which could be decided by this Tribunal, and deal with any other matters arising when the cases were transferred back to it, in the normal way.

3. The parties discussed the service charge percentage attributable to each Flat at the hearing, as this item was not stated clearly in the Lease. After discussion, the Applicants agreed that the percentages used by the landlord since 2005 were correct. The Tribunal has therefore not made any determination relating to that matter.

4. As noted above, the route to the hearing has been slightly complex. The documentary evidence showed correspondence querying the service charges stretching back to 2005. The previous managing agents, Gross Fine, commenced work in October 2004. At some point in 2007, Gross Fine went out of business, and the present agents, DE & J Levy (Levys) took over on 1st October 2007. The previous agents had failed to prepare final accounts for the years 2004/5, 2005/6 and 2006/7. Levys rectified this situation by arranging for final accounts for 2004/5 and 2005/6 to be produced in January 2008, which were sent to the Applicants on 29th April 2008. The 2006/7 accounts were sent to the Applicants on 27th May 2009. The Applicants also had some difficulty in identifying which agent was in charge of particular parts of this property, which is part of a larger estate managed by Jones Lang La Salle. There was also some ambiguity on the part of the Respondents at the Case Management Conference as to when the Respondents became landlords, and also which company is in day to day charge

of management, but this was resolved by Mr G. Smith, a Director of Levys, in his witness statement dated 1st September 2014.

Hearing

5. The parties agreed that the subject property was part of a building comprising a shopping parade originally built on four floors, refurbished in about 2004 and converted into commercial premises below, with residential accommodation on the upper floors. This property shares a fire escape route with the adjacent McDonalds restaurant. There was an entry phone, but no lift. The main entrance door opens directly onto the street between MacDonalds and Crystal Kebab, very close to Kings Cross station.

6. At the start of the hearing the Respondent served a further bundle of papers, mainly to supplement and explain the accounts, together with an amended index. The bundle included several material invoices not seen by the Applicants previously, which (inter alia) completed the cleaning invoices for 2011/12 and 2012/13.

7. There was also a discussion at the start of the hearing as to whether the current agents had received copies of the invoices for the period 29th September 2004 – 28th September 2007. Initially the Respondents denied that they had received copies, but agreed when taken to correspondence in the bundle that they had had them in 2009, but no longer had them. The Applicants noted that they had put some copies for that period originally obtained from Levys in the bundle.

8. The large bundle was prepared by the Respondent's solicitors. Despite the index, it was not easy to use, as the invoices were not described separately, not in order, and attached piecemeal to correspondence. Consequently they were very difficult to find. The parties and the Tribunal struggled with it. Also a significant number of accounting documents only arrived on the morning of the hearing.

9. The Applicants made an initial statement of case with their application, and used a Scott Schedule to set out their detailed complaints on specific items of service charge. Ms Bell's witness statement was dated 22nd January 2015. Mr Gill and Mr Douglas made witness statements dated 23rd January 2015, all supplemented with oral evidence at the hearing. For the Respondents, Mr Smith made two witness statements dated 1st September 2014 and 22nd January 2015. Mr Vyas made a witness statement dated 20th January 2015. The statements of case were supplemented with oral evidence at the hearing.

10. The Tribunal decided to deal with legal issues first, and then consider the Scott Schedule by subject.

Jurisdiction Issues

11. The Respondents submitted that there was no merit in entertaining the application relating to the service charge years commencing on 29th September 2004, 2005 and 2006 as the Applicants could not achieve any benefit from a determination. Any overpayment by the Applicants would have to be recovered in County Court proceedings, which would be a restitutionary claim. The prospects of a successful claim would often be slender. The Respondents would be entitled

to rely on a defence of good faith change of position. Also in relation to the year ending 2005 that all the costs were incurred before either of the Respondents acquired any interest in the property. Mr Brown referred to R (Daejan Properties Ltd) v London Leasehold Valuation Tribunal [2001] EWCA Civ 1095 and Nurdin & Peacock v Ramsden [1999] 1WLR 1249 Ch. for support.

12. Mr Brown referred to the Applicants (de facto) submission that the demands for payment were invalid as they were not compliant with Section 47(1) of the Landlord and Tenant Act 1987, firstly as the statutory information relating to the landlord was inaccurate or omitted, and secondly there was no statutory statement of the lessee's rights and responsibilities [as required by the Service Charges (Summary of Rights and Obligations) (England) Regulations 2007/1257]. Although the Respondents did not admit the original demands were non-compliant they had served fresh demands for all years in question on all Applicants on a number of dates between 24th February and 28th September 2014. Copies were in the bundle. It was possible to comply retrospectively with Section 47 and retrospective validation did not engage the (18 month) rule in Section 20B of the 1985 Act. He relied upon Beitov Properties Ltd v Martin [2012] UKUT 133 (LC) and Johnson v County Bideford Limited [2012] UKUT 457 (LC) for support.

13. Ms Bell in her skeleton argument dated 24th February 2015 referred to the original demands in the bundle. Between 2005 and 2009 the demands had stated that the landlord was Regent Quarter Limited. Between 2009 and 2014 the landlord was stated as the First Respondent alone. The landlord's addresses for service were incorrect. The Respondents had never served notice of change of landlord on the lessees at any time.

14. The Tribunal considered the evidence and submissions. It was prepared to accept Mr Brown's submission on the lack of benefit of a determination relating to the service charge year 2004/5. On the evidence of Mr Smith, the First Respondent had only become the landlord in December 2005, in the next service charge year. Obtaining documents from a third party after more than 10 years would be difficult, if not impossible. While some documents still existed and were in the bundle, it seemed that enforcing repayment by the then landlord would fall foul of the problems identified by Mr Brown in enforcing restitutionary remedies. However, the Tribunal did not accept his submissions relating to the years 2005/6, 2006/7 or 2007/8. As against the First Respondent, the question of a restitutionary remedy did not arise. The parties were entitled to set off any debt owed to the other against the service charges. Thus if L is found in 2015 to owe T from service charges levied in 2006, L or T can set off that debt against service charges owed by T relating to other years. On the question of limitation, the better view appears to be that the 6 year rule imposed by the Limitation Act 1980 has very limited application in service charge cases. In this case, the limitation period only appears to run from the date of the LVT decision deciding what is a reasonable sum, rather than the date of any overpayment. A detailed discussion of a very complex subject can be found in the LVT decision of 29th January 2004; St Andrews Square, LON/00AW/NSI/2003/0054, see particularly Para.27.

15. Relating to compliance with Section 47 of the 1987 Act, the Tribunal considered that most, if not all, the original service charge demands did not comply with Section 47 because until 2009 the wrong landlord was cited, and thereafter no

address for the landlord was specified although an address for notices within England and Wales was specified. There was no reference at all to the joint landlord until 2014. The Tribunal noted problems with the reissued demands in 2014, but was prepared to accept that naming of at least one landlord correctly was sufficient to satisfy Section 47. The Tribunal concluded that the better view was that the demands were compliant. Although breach of Section 3 of the Landlord and Tenant Act 1985 was not specifically raised by the Applicant, and appears not relevant to compliance with Section 47, or any jurisdiction of this Tribunal, the Tribunal was surprised that the Respondents did not give evidence of serving the necessary notices. The identity of the landlord at any particular time is clearly a matter of concern for any party.

Cleaning common parts 2006 – 2013

16. The Applicants submitted that the inside and outside of the building was dirty and costs should be nil. They proposed a figure for 2006 and 2007 of £275 to represent the cost of £11 per hour for one hour per fortnight. For 2008 – 2010 they proposed a figure of £12 per hour, and from 2011 – 2014 they proposed a figure of £13 per hour. Ms Bell produced a comparison with another property she owned in London E3 for use relating to the service charges generally. None of the Applicants had seen anyone cleaning, and there had been no cleaning schedule on display. They had no idea when or for how long anyone cleaned the common parts. Commenting on the 2015 budget which revealed that the cost would include £600 for an annual carpet clean and window cleaning, Ms Bell stated that the Applicants did not want to spend that amount on cleaning the carpets. They could be vacuumed and wiped twice a month for half the cost.

17. The Respondents submitted that cleaning occurred 4 times per month until 2008, and included periodic window cleaning and carpet cleaning. In 2009 at the request of the Applicants the cleaning was reduced to twice per month. Invoices were in the bundle.

18. The Tribunal considered the submissions, evidence, and photographs taken shortly before the hearing, but sent afterwards, of the building and common parts. The photographs suggested that the common parts were in good condition, considering that no redecorative work had apparently been done since 2005. They did not look neglected. Also, one of the Applicants' own photographs, (page 1500 in the bundle) apparently taken in October 2014, showed not only a cleaning record (the last entry being in October 2014), but also a cleaning schedule setting out the cleaners' duties. The Tribunal also noted from the photographs (page 1498) that the cleaners were not responsible for the street outside, as the entrance opened directly onto the street. The property comparison put forward by Ms Bell was of little assistance, as there were no details of the accommodation, common parts or local market for cleaning. The Applicants offered no specific evidence to back up their claim of unsatisfactory work. The invoices were all there. The Tribunal analysed several invoices and concluded from the description of the property common parts that a charge of about £18 per visit was being made for this property in 2005, working out to over an hour's work, which seemed about right for the common parts described to the Tribunal. Initially the cleaner had come twice a week (2005), but this had been reduced during 2007/8 to once per week. From 2009 the cleaners came only twice a month, at the Applicants' request. There was clearly a large reduction during 2007, about the time the

previous agent ceased business. The Tribunal found it surprising that the Applicants had requested a reduction of the cleaning if the property was dirty as suggested. The Tribunal concluded that if the work was being done, with special works periodically following the landlord's evidence, then the costs demanded for all years were reasonable. Clearly the Applicants took a different view to the managers as to the need for some works, e.g. carpet cleaning, but it is well established that the method of carrying out a service is within the landlord's discretion to decide, subject to the overriding requirement of reasonableness. The fact that the service could be obtained more cheaply elsewhere or by some other method is not, of itself, unreasonable. Also the Tribunal's powers under Section 27A do not extend to ordering work to be done in any particular way.

Internal(General) Repairs and maintenance. (including M&E maintenance) 2006 - 2014

19. The Applicants submitted that they were not aware of any such work taking place. Without a breakdown of the costs they proposed to pay nothing. They considered the charge had become a standard one for every year, and they were not consulted on whether they were prepared to pay. They considered that if a single contractor was to be used, a proper tendering process should be followed.

20. The Respondents submitted that the work mainly covered the landlord's repairing responsibilities, including weekly fire alarm testing, monthly emergency lighting, quarterly fire panel maintenance, six monthly emergency lighting maintenance, and annual fire extinguisher checks. Some invoices were provided, although some other items had to be located in the expenditure summaries for each year. Latterly they had an annual contract with ILM to do the work. While no formal tender was necessary, the Respondents would normally keep a contractor which did not increase its prices by more than inflation.

21. The Tribunal considered the submissions and evidence. The Applicants' evidence was very vague. The Landlord had provided a breakdown in the Scott schedule which indicated that a considerable amount of work was being done, requiring many site visits. The invoices showed that latterly most of the work was being done by IML, but it seemed that they were being paid by the job, rather than on a regular retainer. As the contract was for no more than a year it did not attract the consultation procedures required by Section 20 of the Landlord and Tenant Act 1985. The Tribunal decided that the costs were reasonable and payable as demanded.

Estate charges 2006 - 13

22. The Applicants submitted that these had been described as general maintenance expenses. The Applicants received no benefits from them and should pay nothing. No invoices had been produced relating to the Estate charges. Until 2011 no financial information relating to the estate had been given. Since then estate information packs had been sent to Levys, who passed them on to the Applicants. These packs were complex and difficult to understand. Some money was used to fund the estate security office from which the Applicants received no benefit. In 2013 these charges had substantially increased to £10,000 and eventually it was disclosed that building work was to be done to the exterior of the property. The money demanded was to be paid mainly to surveyors to draw up a specification and tender package. They suggested the money was being paid to the managing

agents. No statutory consultation had taken place under Section 20 of the Landlord and Tenant Act 1985. A letter had been delivered to the Applicants stating that 6 months of building work would start soon, and also to erect an advertising shroud around the building. The Estate should pay compensation for allowing the commercial properties to take away the Applicants' quiet enjoyment. The Applicants got no benefit from the Estate costs, as they faced the street.

23. The Respondents submitted that the expenditure had been made by a previous landlord (in fact managing agent) for the years 2006 and 2007, and they had no information available. They refuted the suggestion that no information had been made available. A one page apportionment and audited accounts had been sent out to all lessees, at least since 2009. The Estate costs included management audit, staff costs (including 24 hour security patrols, security costs, cleaning costs, mechanical and electrical maintenance. In 2013 project surveyor's costs had been added, as the (superior) landlord intended to carry out works of exterior redecoration and repair. The project had not yet proceeded to lessee consultation.

24. The Tribunal considered the evidence. The description of the works suggested a very active estate. While the Applicants might receive comparatively little benefit from the work done, they had agreed in their leases to contribute to the costs. In a Section 27A application the Tribunal has no power to rewrite or ignore the terms of the Lease, nor to order compensation for breaches of covenant. The Tribunal considered that some of the Respondents' submissions were erroneous, particularly relating to the period prior to 2008, It had been admitted at the hearing that the First Respondent became a landlord in December 2005. However it was clear from the Applicant's own evidence that considerable security work was being carried out, including the staffing of a security office, with monitoring of security cameras. The bundle contained considerable evidence, and at the hearing the Respondents produced copies of service charge certificates (which seemed reasonably clear) sent to the Applicants for all years in question. On balance the Tribunal decided that the Estate Charge was reasonable and payable.

Audit fees 2007

25. The Applicants submitted that there was no information why the Applicants were paying nearly £1000 for the audit. The cost should be £500. They presumed 2 York Way was audited as part of a bigger portfolio. £665 for six properties was excessive.

26. The Respondents explained that the audit cost in 2007 was for the three years 2005, 2006 and 2007.

27. The Tribunal considered the evidence and submissions. The Applicants had reason to query the figure of £983 if they believed it was for one year. However the explanation given by the Respondents resolved the point. The Applicants went on to complain about a figure of £665. However it did not appear in the Scott schedule, and therefore the Tribunal refused to consider it.

HSE Reports 2007 - 13

28. The Applicants submitted that they had no information as to what they were paying for, what was being inspected and the high cost. They proposed to pay nil.

The Applicants considered that a retainer fee of £210 (in 2008) was unreasonable for a service which was not necessary.

29. The Respondents submitted that the charge was an "annual retainer fee for Health and Safety Consultants and web based data system for all H&S compliance documentation".

30. The Tribunal considered the evidence and submissions. The Respondents' submission was not inaccurate, but would have benefited from translation into plain English. What they were trying to say, and what the Applicants clearly needed to know, is that legislation now requires property managers to carry out detailed Health and Safety risk assessments on the common parts of buildings at regular intervals, and to keep full records. The Respondents might have reasonably added that the paperwork required is extensive and fiddly, and this property is above restaurants, which as a class have a high fire risk. The "retainer" fee is not quite what comparison of the annual cost of this work shows, but it did show that the work seems to follow a 6 year inspection cycle with higher costs likely in years 1 and 7. The Tribunal would expect to see a pattern, possibly with "spikes" occurring if damage or building work occurred which needed inspection. The Tribunal decided that the work was necessary, and that the cost was reasonable and payable.

Buildings Insurance 2007, 2008, 2013 and 2014

31. The Applicants submitted that the Insurance was not included in any budgets but was collected separately on what they called a "surprise" invoice part way through the year. They considered the costs were too high and suggested that the insurance should be £1,000 per year. The amounts covered on the estate were unknown so the Applicants were unable to compare it with those of their commercial neighbours. Recently Levys informed them that £350,000 had been claimed on the Estate, leading to increased premiums. The Applicants wanted to know where the insurance money went when there were claims.

32. The Respondents submitted that until 2007 the records from the broker were not available. Summary Certificates were produced for 2008, 2013, and 2014. For 2014 the Respondents noted in the Scott Schedule that the reinstatement cost of the building is assessed every 3 years to ensure accuracy, and the market was tested to ensure competitive quotations were sought. At the hearing, the Respondents stated that the insurance was placed through a broker.

33. The Tribunal considered the evidence and submissions. The Tribunal noted that paragraph 2.4 of the Fourth Schedule to the Lease requires the lessee to pay the landlord the insurance contribution as rent "on demand". This right can be exercised at any time. While it is possible for the Respondents to arrange their affairs so that insurance premiums can be demanded to coincide with service charge demands, they are not obliged to do so. The Respondent provided insurance summaries for the years in question. The annual premiums ranged from £942 in 2006, followed by £1,879 in 2007, then down to £1,225 in 2010 and 2011, rising again to £1,608 in 2014. The Respondents described insurance practice when testing the market which seemed in line with good commercial practice. The Applicants produced no comparative quotes to support their figure of £1,000. Possibly they relied upon the 2006 premium. The 2014 premium

worked out at about £260 – £280 per unit. Even the reported 2015 premium, which was not in issue, was about £310. In the Tribunal's experience, such premiums seem very competitive for this type of property in this location. The Applicants' demand for information about claims money seemed misconceived. This would not be a service charge item unless work was done to the building pursuant to an insurance claim. Otherwise it would be paid to the individual lessee or contractor doing remedial work.

Lamps 2011 - 2013

34. The Applicants submitted that there was no evidence to support this cost. They should pay nil.

35. The Respondents submitted that the cost not only included lightbulbs, but other fittings where necessary. The emergency lights were included.

36. The Tribunal considered the evidence and submissions. The invoices were in the bundle. The cost included attendances to fit bulbs. The Tribunal considered that some replacement work was being done reactively, rather than all at once, which would increase costs significantly. It noted external lights from the photographs. Nevertheless this cost seemed high, but in the absence of any specific challenge to the invoices, the Tribunal decided that the cost was reasonable and payable. The managers might wish to satisfy themselves that this service is providing value for money, but this is merely an observation.

Electrical repairs 2014

37. The Applicants submitted that no breakdown had been given and they were not aware of any work.

38. The Respondents provided invoices and stated that the electrical repairs were self-explanatory.

39. The Tribunal considered the invoices. They concluded that the costs were reasonable and payable in the absence of any specific challenge.

Management 2006 - 2014

40. The Applicants submitted that little or no management had taken place during 2006 and 2007 then Gross Fine ceased to exist. For 2008 onwards they complained of lack of information, a complicated invoicing system which was difficult to interpret and copies of accounts which were difficult to read. No balance sheets were produced. The Landlord should not have agreed increases in Levys' fees as it was spending the Applicants' money. The agents refused to meet the Applicants to discuss charges or organise a meeting with the freeholder. Requests for information and mediation met with much photocopied duplicate information stating how much should be paid and threatening letters if they did not pay. Court proceedings were issued and extortionate interest was demanded. There was no limit on legal fees being demanded. They proposed a £600 charge for each year. They considered that in 2015 Levys would charge £420 per unit for their work. The produced evidence of another agent charging £240 per flat in London of similar value and rent. They thought that the Respondents should consider if Levys were the right kind of agent for this type of work.

41. The Respondents submitted that balance sheets, rather than the agents' one page apportionments, would incur extra audit charges. The agents' management duties included preparation of service charge budgets, accounting and raising invoices to collect service charges, organising and paying service contractors, making regular inspections to ensure contractors complied with duties, dealing with ad hoc repairs, dealing with insurance claims, health and safety issues, dealing with service charge transactions, detailing expenditure, and agreeing the audited accounts. A copy of the management agreement was produced at the hearing. The agreed basic charge per unit in 2008 was £300. This was increased to £350 per unit on 7th July 2014, with effect from 29th September 2014. The agents denied they had been unresponsive. The only correspondence they were aware of was with Ms Bell in 2013 and 2014, and believed that all accounts queries had been answered. They believed that 2 meetings held with Ms Bell (in 2013 and 2014) and their willingness to reduce the cleaning at the Applicants' request, demonstrated their willingness to respond.

42. The Tribunal considered the submissions and evidence. The fees invoiced to the service charge suggested that the fee agreement dated 30th September 2008 was not being followed, for reasons which are unclear. The agreed fees were stated to be £300 per unit from 2008 – 2014, and then £350 per unit in 2015. However the gross fees charged were:

    2008 – £1762.50, 2009 – £1725, 2010 – £2185.50, 2011 – £2340, 2012 – £2412, 2013 – £2412, £2014 (estimate) – £2410.

    This pattern seems perplexing. £300 per unit comes to £1800 per annum plus VAT. Thus only in 2010 does the figure appear to be charged at about £300 per unit. The figure for 2012 – 21014 seems to indicate a charge of £321.60 per unit, (if VAT is removed). Inclusive of VAT that figure is £402. Ms Bell suggested (without referencing her source) that in 2015 Levys will charge £420 per unit (which is presumably £350 plus VAT). Thus, whatever the management agreement says, some sort of percentage increase has been applied in some years prior to 2015, but not in others. No explanation has been offered.

43. The Tribunal considered the correspondence and exchanges between the Applicants and the agents. Such a relationship is rarely perfect, but this relationship seemed rather distant. It was not a "Rolls Royce" service. While the Applicants could be demanding, the Agents were rather re-active, rather than taking the initiative when problems arose. The Applicants were at pains to point out that the agent's staff were polite, but the main thrust of their complaints was lack of information, and apparent lack of action in response to their complaints, resulting in administration charges being raised against leaseholders (which incidentally may not be payable against a non-compliant demand). The Tribunal had few doubts that necessary work was being organised and paid for, and that Health and Safety issues were being dealt with. However this was not a major service charge exercise, as the Estate work was being managed and charged for separately by the Respondents. Even the insurance work did not involve arranging the insurance, but only dealing with claims. There was also the issue of the non-compliant demands, which had been sent out for almost the whole of the period in issue. The Tribunal considered that, taking into account the work actually being done, the location and type of property involved, and the problems

encountered by the Applicants, a reasonable service charge for the work done should be £275 plus VAT for the years 2006 – 2014 inclusive.

44. For the estimated service charge years 2014, the Tribunal decided to allow the estimates in full as reasonable and payable (with the exception of the management charge for 2014 as noted above). The parties remain free to apply under Section 27A once the final accounts have been issued.

45. The Respondents shall make the necessary accounting entries in the Applicants' accounts to give effect to this decision, and send a further demand for payment within 21 days of this decision. The Applicants shall pay any monies due to the Respondents within a further 21 days.

46. Although not forming part of this decision, the Tribunal wishes to correct one statement of the Respondent (in Mr Smith's statement), as the true legal position may be helpful for all parties. It is not an abuse of process for a lessee sued in the County Court to commence an application in this Tribunal. It is open to any party to make an application to this Tribunal, particularly when additional items are disputed. Even in a case which ostensibly relates to the same issues, it is often good practice for either party to make a separate application to the Tribunal relating to the relevant service charge years so that all issues likely to be in dispute are decided by the Tribunal. This will save time and expense. The main procedural point in such a case is to apply to the County Court to transfer the service charge issues to the Tribunal. Without evidence of such an order, the Tribunal will not hear that part of the application.

Costs and Fees

47. The Tribunal decided at the end of the hearing to allow the parties to make written submissions relating to the Section 20C application after this Decision had been issued. Any party may make written submissions on this issue within 14 days of the date of issue, with one copy to each of the other parties, and four copies to the Tribunal. The Tribunal will then decide this matter on the papers as soon as possible after that date.

Signed: Lancelot Robson
Tribunal Judge

Dated: 20th April 2015

Appendix

Landlord & Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation 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 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 leasehold valuation 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

13.-(1) The Tribunal may make an order in respect of costs only-

(a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on application or on its own initiative.

(4) – (9)...
