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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2014/0635**
Property	:	**92 Evans Road, London SE6 1QQ**
Applicant	:	**Mr S Douglas and Mrs A Douglas (leaseholders)**
Representative	:	**Not represented**
Respondent	:	**Phoenix Community Housing (landlords)**
Representative	:	**Mr R Parker (leasehold officer)**
Type of Application	:	**Application under section 27A of the Landlord and Tenant Act 1985 to determine the liability to pay a service charge**
Tribunal Member	:	**Professor James Driscoll (Judge) , Mr Neil Martindale FRICS**
Date and venue of hearing	:	**16 and 17 April 2015 (the tribunal inspected the premises before the start of the hearing on 16 April 2015)**
Date of Decision	:	**16 June, 2015**

DECISION

The Decisions summarised

1. This is a summary of our determinations of the recoverability of the costs of major works carried out between 2013 and 2014. They are based on the final figures given for the charge which was dated 10 April 2015. The relate to the 2012 - 2013 service charge accounting period.

2. For the access equipment we determine that the reasonable costs that can be recovered is the sum of £533.33.

3. For external decorations we determine that the sum of £120.83 is recoverable.

4. For the internal decorations we determine that the sum of £583.33 is recoverable.

5. For the works and and repairs to the structure, we determine that the sum of £2000 is recoverable for the works to the balconies and the sum of £691.35 for the costs of the remainder of these works.

6. For the external plumbing works we determine that the sum of £231.27 is recoverable.

7. For works to the communal windows we determine that the sum of £122.45 is recoverable.

8. As to the works to the bin store we determine that the sum of £56.78 is recoverable.

9. The sum of £135.39 is recoverable for estate works.

10. Communal lighting costs of £160.42 are recoverable.

11. Lateral mains renewal costs are capped at £100.

12. The sum of £250 is recoverable for the costs of a television aerial.

13. Statutory fees of £23.40 are recoverable

14. We also determine that the landlord is entitled to charge first sums based on 18.50% of the total costs as the contractor's overheads and second the

additional sum based on 3.0% of the contractors costs in respect of its charges for managing the project.

15. We direct that the landlord reimburses the leaseholders the sum of £630 in respect of the fee payable when the application was made and and the additional sum for the fee payable for the hearing. This is to be deducted from the costs payable by the leaseholder.

16. No order is made under section 20C of the Act in relation to the landlord's costs of the application.

Introduction

17. This application is made by Mr and Mrs Douglas, the joint leaseholders of the subject premises which is a flat on the first floor of a block of flats which is owned and managed by Phoenix Community Housing Association. We will refer to Mr and Mrs Douglas as the 'leaseholders' and to the respondent to the application as the 'landlord'.

18. In their application the leaseholders challenge the recoverability of service charges for the service charge accounting period, 2012 - 2013. The application is made under section 27A of the Landlord and Tenant Act 1985 and it is dated 10 December 2014. (A similar application was made by two other leaseholders which was originally joined with this application. However, we understand that that application has since been withdrawn. This followed a letter received by the tribunal on 9 April 2015 in which those leaseholders, Mr and Mrs Pochen informed the tribunal that they no longer wished to continue with their application (which related to 81 Crutchley Road, London SE6).

19. On 10 April 2015 the tribunal issued a direction under rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that Mr and Mrs Pochen are no longer to be regarded as applicants.

The Application and the case management conference

20. A case management conference took place on 15 January 2015 which the leaseholders attended as did Mr Richard Parker on behalf of the landlords. Directions were given and the parties were given the opportunity of mediation to resolve the dispute. As directed the leaseholders prepared a bundle of documents which included a copy of their application form, a 'Scott schedule' prepared by the landlords with the leaseholders detailed comments, a statement signed by the

leaseholders dated 16 March 2015 (signed also by Mr and Mrs Pochen, the other leaseholders who did not continue with their application), copy accounts, several photographs of the exterior of the premises taken by the leaseholders, copies of documents relating to long-term agreements and a copy of a decision of this tribunal on other flats in the same building dated 4 August 2014.

21. Additional documents were produced by the landlords and these included a copy of the lease, the final account, various other documents relating to the long-term agreement and consultation documents relating to the works.

Our inspection and the hearing.

22. The hearing took started on 16 April 2015 and continued during the following day. We had the opportunity of attending the subject premises on the morning of 16 April and we were able to conduct an external inspection. We did not have the opportunity of viewing the leaseholder's flat but one of their neighbours was kind enough to allow us a brief viewing of another flat situated on the first floor of the premises.

23. The leaseholder's flat is one of six flats in the building. At the rear of the building are small garden areas and a communal footpath. Behind the buildings is a school.

24. The tribunal inspected the block starting at the front shared pathway. It noted the external construction and condition of the front elevation as a 1930's three storey block in fair condition. It inspected the interior of the shared entrance hall and stairwell from ground to second floor and noted the good condition of the relatively new flooring and the paintwork to the interior walls and ceilings which had been completed to a low standard with little apparent preparation. It was already starting to look poor. It viewed the rear elevation which was much as the front with the addition of new but poorly designed individual balconies to all flats above ground floor. The rear external walls had been repaired in places. One of the shared bin stores for the terrace of blocks of flats had received a new roof, whereas the other had been removed following a recent fire though these did not relate directly to the dispute between the parties.

Reasons for our decisions

25. It is both necessary and important to summarise the way in which the consultation requirements mandated by section 20 of the Act and in the

detailed regulations made under that provision have been applied in this case.

26. In June 2011 the landlords notified the leaseholders (and other leaseholders who are affected) of their intention to enter into a long-term qualifying agreement. Under section 20 of the Act and the regulations made under that provision a landlord may not enter into an agreement relating to works for longer than 12 months without first consulting with those leaseholders who will have to contribute to the costs of any works undertaken under that agreement. These regulations are the Service Charges (Consultation Requirements)(England) Regulations 2003.

27. The purpose of this particular long-term agreement is that the landlord wished to appoint a group of contractors to carry out major works for which public notice needs to be given under relevant EU rules. This consultation was supplemented in December 2011 when leaseholders were notified of the intention to enter into a long-term agreement with a company called Bakehouse (based in Romford, Essex). The proposed agreement would last for four years at an estimated cost of £15,559,694.83 with an indicative cost for the block at 84 to 94 Evans Road in the sum of £112,872.75.

28. In August 2012 the leaseholders were notified of the intention to carry out works under the long-term agreement at an estimated cost of £137,799.44 and the estimate for the charges to the leaseholders in the sum of £23,466.57.

29. It is common ground that the works started during the 2012/13 financial year and continued into the 2013/4 financial year when they were completed. On 8 January 2014 the leaseholders were given notice under section 20B of the Act with an estimate of the costs incurred up to that date.

30. At the hearing Mr Douglas addressed the tribunal and he spoke to his written statement. Broadly speaking the leaseholders accept that the landlord is responsible for the repair and the improvement of the premises. They also accept that they are under the terms of their leases responsible, in principle, to contribute to the landlord's costs of discharging its obligations. However, they stress that the costs must be reasonable and the quality of the works must be of a satisfactory quality. In their opinion, the costs were too high and the quality of the completed works was in several respect poor.

31. Mr Douglas did not call any witnesses. We asked him if he had considered obtaining quotations for works from other builders but he had not done so. Nor had he engaged the services of a building surveyor to advise him and his wife on the quality of the works. He has not paid anything towards the costs as he is dissatisfied with these two major matters.

32. For the landlords, Mr Parker told us that it was accepted that there are some matters where the building contractors need to carry out additional and remedial works. Mr Parker also relies on a previous decision of this tribunal (LON/00AZ/LSC/2014/0162) on the issues of the costs of similar works to a similar building on the same estate as the subject premises. He says that the tribunal in that case decided that for the most part both the costs of the works and the standard of them were of a reasonable quality.

33. As the leaseholders are challenging the service charges we consider that they bear the burden of establishing their case. As we have already noted they did not call any evidence in support of their various challenges. We appreciate that professional costs is always an issue for the unrepresented but it is a pity that they did not at least get an estimate of a building surveyor's fees for inspecting and advising on the works that have been carried out. Such a report might well have supported their case or helped to allay some, at least, of their concerns about the quality of the works.

34. Whilst we note Mr Parker's point about a previous relevant decision of this tribunal such decisions are not binding precedents which we are required to follow. We rest our conclusions largely on the basis of our own detailed inspection and our collective professional knowledge and experience.

35. Although the landlords have correctly used and followed the statutory requirements for entering into a long-term agreement, and even though they may claim that such agreements may be cost-effective, the limited scope for leaseholder to comment or to object should not be underestimated. As the facts of this case illustrate a landlord has a curtailed consultation procedure when it has a long-term agreement with a contractor. It did not have to consult over the scope of the proposed works, let alone, the choice of the contractor. The size of the charges for a modest flat are in our experience very much on the high side. As few of the flats are held on long leases but on (we assume) secure tenancies (under the Housing Act 1985) most of the costs will be borne by the

landlords and in only a few cases will occupiers have to contribute (that is any long leaseholder).

36. We also note that the landlord accepts that some remedial work needs to be carried out which we take as an acknowledgement that some of the works were not carried out to the required standard.

37. Our summary of the individual decisions is based on our assessment of the works and what we consider to be a reasonable charge for the works.

38. Finally we turn to costs issues. Mr Parker told us at the hearing that there will be no legal or other professional charges to be added to future service charge bills. We note this but just for the avoidance of doubt we make an order under section 20C of the Act which has the effect that the landlord cannot include in any future service charge for these two leaseholders any professional charges incurred in the conduct of this case.

39. We were also asked to make an order directing the landlord to reimburse the leaseholder for their charges (£630 for the costs of the application and the hearing fee). On balance we consider that this is a reasonable step to take in the circumstances of this case. We consider that the landlords, who surely recognised the very large sums to be charged and having accepted that some remedial work needs to be done could have made more of an effort to reach agreement on the sums to be paid. If they had done so, it might not have been necessary for the leaseholders to be put to the expense of bringing these proceedings.

40. Accordingly we order that the landlord reimburses the leaseholders in the sum of £630 and that this be deducted from the amounts owing as service charges in light of our determinations of the recoverability of these charges.

41. The landlord is to issue a fresh demand based on the specific determinations summarised in paragraphs 1 to 16 above to which the sums referred to in paragraph 14. From this sum should be deducted the sum of £630.

42. The net sum is to be paid by the leaseholders to the landlord by 31 July 2015.

Judge James Driscoll
16 June, 2015

Appendix of the relevant legislation

Landlord and 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
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.
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.
But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 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.

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.