1480

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2016/0209**
Property	:	**10 Park Lea Court, 86 Durley Road, London N16 5JT**
Applicant tenants	:	**Michael Atkins and Esther Victoria Atkins**
Representative	:	**In person**
Respondent landlord	:	**Park Lea Court Ltd**
Representative	:	**Drivers & Norris**
Type of Application	:	**Service charge dispute**
Tribunal Members	:	**Tribunal Judge Adrian Jack**
Date and venue of determination	:	**19th July 2016 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19th July 2016**

DECISION

Procedural

1. By an application received by the Tribunal on 13th May 2016, the applicant tenants sought determination of the service charges owed for the years 2005 to present and for 2016 and future years.

2. The Tribunal held a case management conference on 7th June 2016. The applicant tenants attended; the landlord did not, but sent a letter from Drivers & Norris, the managing agents. The Tribunal gave directions for the matter to be determined on paper, unless a hearing was requested. In the event no one requested a hearing.

The facts

3. The tenant applicants have been leaseholders of Flat 10 Park Lea Court since about 1992. In 2005 all, or all but one, of the tenants of the 16 flats at Park Lea Court purchased the freehold. They used the vehicle Park Lea Court Ltd. There are seven directors, of whom Mrs Atkins is one.

4. Sadly there has been an on-going dispute about the allocation of expenses between the various tenants. The leases of the sixteen flats are all in similar terms, except as regards the share of the expenses. The Fourth Schedule of all the leases divides expenditure into Part I expenditure, which is expenditure on "the building" and Part II expenditure, which is expenditure on "the Mansion". These terms are defined in recital (1) to the leases as follows:

> "[S]ixteen flats known as Numbers 1 to 11, 11A and 12 to 15 Park Lea Court garages parking spaces and the gardens and grounds thereof (all which premises are hereinafter referred to as 'the Mansion' and the building of which the flat hereby demised forms part is hereinafter referred to as 'the building' and the buldings of which the flats comprised in the Masion form part are hereinafter referred to as 'the buildings')"

5. Park Lea Court appears to have been built in three stages, with three separate entrances and staircases. The precise order in which the stages were built is unclear, but nothing turns on this. The three stages comprise Flats 1 to 6, Flats 7 to 10 and Flats 11, 11A and 12 to 15.

6. The leases of Flats 1 to 6 provide for each lessee to pay two twenty-fourths of the Part I expenditure and two fortieths of the Part II expenditure. The leases of Flats 7 to 10 provide for each lessee to pay two sixteenths of the Part I expenditure and three fortieths of the Part II expenditure. In the leases of Flats 11, 11A and 12 to 15, the position is more complicated. Flats 11 and 11A pay two sixteenths of the Part I expenditure and two fortieths of the Part II expenditure. Flats 12 to 15

pay three sixteenths of the Part I expenditure and three fortieths of the Part II expenditure.

7. It will be noted that the division between the flats of the Part II expenditure adds up to 100 per cent (the eight Flats 1 to 6 and 11 and 11A paying two fortieths, or a total of sixteen fortieths, the eight Flats 7 to 10 and 12 to 15 paying three fortieths, or a total of twenty-four fortieths).

8. The division of the Part I expenditure is more problematic. If the expression "the building" in the leases is treated as meaning each of the three stages in which the "Mansion" was built. If Flats 1 to 6 are treated as one building, then the leases of those flats provides for a recovery of only twelve twenty-fourths (i.e. half) of Part I expenditure. Likewise if Flats 7 to 10 are treated as another building, recovery of Part I expenditure will only be eight sixteenths (i.e. half again). This problem does not arise in respect of Flats 11, 11A and 12 to 15. The Part I expenditure contributions add up to 100 per cent.

9. The solicitors for the managing agents sought counsel's advice on the problem of Part I expenditure. In her advice of 2nd April 2012 Ms Kerry Bretherton of counsel expressed the opinion that there were three buildings, corresponding to the three stages of the building works and that therefore there was a shortfall of 50 per cent in Part I service charges for Flats 1 to 6 and Flats 7 to 10. She invited instructions to advise on an application (presumably under Part IV of the Landlord and Tenant Act 1987) for a variation of the leases.

10. No application to vary the leases has been made and the applicants seek a final determination of their obligations.

Discussion

11. Ms Bretherton does not refer to the plan of the site. From this, it appears that Flats 1 to 6 and Flats 7 to 10 are contiguous to each other, whilst Flats 11, 11A and 12 to 15 are a separate freestanding building. On this basis, in my judgment, it is a perfectly acceptable use of language to describe Flats 1 to 10 as comprising one building, even if there are two separate entranceways and the two sides were constructed in different stages.

12. If that view of what constitutes "the building" is adopted, then the problem of a shortfall in Part I contributions falls away. The contributions of Flats 1 to 10 add up to 100 per cent.

13. There is in my judgment a strong presumption that landlords intend to cover 100 per cent of the monies expended on service charges. In the current case, the leases in Recital (2) recite that leases in similar terms

are to be granted. It would have been obvious to a purchaser of a long lease, that if all the Flats 1 to 6 were paying only two twenty-fourths, there would be a shortfall. Such a purchaser would expect Flats 7 to 10 to be making up the difference.

Conclusion

14. It follows that Flats 1 to 6 should pay two twenty-fourths each and Flats 7 to 10 two sixteenths each of all Part I expenditure on the building comprising Flats 1 to 10. The letter of CF Day Ltd of 4th December 2012 accurately sets out the proper way to allocate Part I and Part II expenditure.

15. The accounts will need to be reworked to give effect to this. If the parties cannot agree, then they should apply to the Tribunal for further directions.

Costs

16. The Tribunal has a discretion as to costs. Here the tenants have substantially won. The landlord should therefore reimburse the fees payable to the Tribunal.

17. The tenants have not sought an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recovering the costs of the current proceedings through the service charge. However, it may be that, since the landlord is tenant-owned, it would be inappropriate to make a section 20C order.

DETERMINATION

1. The tenants are obliged to pay the landlord two sixteenths of the landlord's expenditure under Part 1 of the Fourth Schedule to the lease and three fortieths of the landlord's expenditure under Part 2 of the Fourth Schedule to the lease.

2. The landlord do pay the tenants £90 in respect of the fees payable to the Tribunal.

3. The parties have liberty to apply to determine the sums due in each year in dispute.

Judge Adrian Jack, 19th July 2016

ANNEX: The law

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 provision 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 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) a leasehold valuation 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 charges 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 charges 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 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 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."

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants' rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.